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Attorneys for Enigma Securities Limited

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

IN RE:

Case No.: BK-S-23-10423-MKN

CASH CLOUD INC., dba Coin Cloud

Chapter 11

Debtor.

**DECLARATION OF ANDREW KISSNER, ESQ. IN SUPPORT OF ENIGMA
SECURITIES LIMITED'S OBJECTION TO DEBTOR'S
SURCHARGE MOTION [ECF NO. 926]**

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(702) 471-7432

I, Andrew Kissner, Esq., do declare the following under penalty of perjury:

1. I am over the age of 18 and competent to testify as to the matters set forth herein.

2. I am counsel of record for Creditor Enigma Securities Limited (“Enigma”) and I make this Declaration in support of *Enigma Securities Limited’s Objection to Debtor’s Surcharge Motion* (the “Objection”) filed concurrently with this Declaration.

3. Any capitalized terms not otherwise defined in this Declaration are defined as set forth in the Objection.

4. On July 13, 2023, I sent an email to counsel to the Debtor and the Committee proposing a consensual surcharge of \$225,000 of the Enigma Collateral. A true and correct copy of that email, redacted to omit confidential settlement communications relating to a separate matter, is attached as Exhibit 1 hereto.

5. On March 28, 2023, I received an email from counsel to the Debtor attaching a draft copy of the Debtor’s motion for approval of “Plan Sponsor” bid procedures. A true and correct copy of that email, as well as the draft motion, is attached as Exhibit 2 hereto.

6. On July 20, 2023, I received an email from counsel to the Debtor informing me that the purchase price to be paid by Heller for the Debtor’s DCMs would be reduced by 10%. A true and correct copy of that email is attached as Exhibit 3 hereto.

7. On August 22, 2023, I took the deposition of Tanner James as the Debtor’s representative pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure (the “Federal Rules”). A true and correct copy of the rough draft transcript of the James deposition is attached as Exhibit 4 hereto. I will file a supplemental declaration attaching the final transcript once it is made available.

8. On August 23, 2023, I took the deposition of Daniel Moses as the Debtor’s representative pursuant to Federal Rule 30(b)(6). A true and correct copy of the rough draft transcript of the Moses deposition is attached as Exhibit 5 hereto. I will file a supplemental declaration attaching the final transcript once it is made available.

1 I declare under penalty of perjury of the laws of the United States that the foregoing is true
2 and correct.

3 DATED this 1st day of September, 2023.

4
5 /s/ Andrew Kissner, Esq.
6 ANDREW KISSNER, ESQ.
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CERTIFICATE OF SERVICE

1. On September 1, 2023, I served **DECLARATION OF ANDREW KISSNER, ESQ. IN SUPPORT OF ENIGMA SECURITIES LIMITED'S OBJECTION TO DEBTOR'S SURCHARGE MOTION [ECF NO. 926]** in the following manner:

☒ a. ECF System: Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities.

☐ b. United States mail, postage fully prepaid:

☐ c. Personal Service:

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handling the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. By direct email (as opposed to through the ECF System): Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ e. By fax transmission:

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ f. By messenger:

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 1, 2023

By: Bart K. Larsen, Esq.

Exhibit 1

Kissner, Andrew

From: Kissner, Andrew
Sent: Thursday, July 13, 2023 3:00 PM
To: Axelrod, Brett; McPherson, Jeanette E.; Gayda, Robert J.; LoTempio, Catherine
Cc: Lee, Gary S.; Severance, Alexander Gerard
Subject: Coin Cloud -- Enigma Settlement Proposal -- SUBJECT TO FRE 408 – CONFIDENTIAL SETTLEMENT COMMUNICATION – PRIVILEGED & CONFIDENTIAL
Attachments: Coin Cloud - Global Settlement Term Sheet - 2592536.DOCX; In re BENNETT FUNDING GROUP_ 255 B.R. 616.PDF; Planned Furniture Promotions_ Inc. v. Benjamin S. Youngblood_ Inc._ 374 F. Supp. 2d 1227.PDF; 3.8 4.6.23 Coin Cloud - Kiosk Reconciliation LENDER.xlsx
Categories: DM, #138758990 : 28374 : 0000001 : AXK38

All,

Please see the attached proposal made on behalf of Enigma, which outlines the terms of a global settlement of the Committee's identified challenge to Enigma's collateral package and the Debtor's asserted claims for surcharge of Enigma's collateral. This proposal is subject to FRE 408 and any state law equivalents, and remains subject to ongoing review and comment in all respects.

We recognize that this has been a very difficult case. And without pointing fingers or dwelling on what could have been done differently, I will simply observe that the value achieved from the sale process was not necessarily in line with the parties' expectations at the outset, with the result being that the estate is in an extremely precarious position. Again, Enigma recognizes this reality, and it is willing to "share the pain" to ensure this case can get across the finish line. With that in mind, **it is willing to turn over [REDACTED] of its recoveries to the estate, for a "net" secured claim of [REDACTED] and a deficiency claim of [REDACTED]** (the deficiency claim is based on 534 machines being abandoned to Enigma with a value of [REDACTED] each). The attached term sheet allocates \$225,000 of that consideration to the Debtor's asserted surcharge claims, and [REDACTED] to the Committee's challenge. We are agnostic as to how the money is split up; however, I thought it worthwhile to set forth our rationale for that division in some degree of detail, so that you can better understand my client's perspective.

Surcharge

As to the surcharge, the Debtor has proposed to deduct approximately \$1,080,000 (or 58%) from the sale proceeds allocable to Enigma, consisting of about \$170,000 of "warehousing" fees, \$665,000 of what appear to be generally applicable advisor's fees (though the schedule states that they were related to the sale, it is difficult to discern from the provided backup), \$100,000 of Enigma professional fees, and about \$146,000 in postpetition interest paid to Enigma. Setting aside the "sticker shock" of a 58% surcharge, we think the Debtor will have a difficult time recovering anywhere near this amount, for the following reasons:

- *First*, as you know, the Debtor has the "onerous burden" of proving that a surcharge is reasonable, necessary, and provided a "quantifiable" benefit directed primarily at the secured creditor. *See In re Debbie Reynolds Hotel & Casino, Inc.*, 255 F.3d 1061, 1068 (9th Cir. 2001). It is also the Debtor's burden to quantify the actual—and not hypothetical or premised on cost avoidance—benefit to Enigma. *See In re Cascade Hydraulics & Utility Serv., Inc.*, 815 F.2d 546, 548 (9th Cir. 1987). We are continuing to review the voluminous documentation provided to us, but based on an initial review, we have not seen any materials that quantify the benefit that Enigma purportedly received as a result of the incurrence of the costs the Debtor seeks to surcharge, which under Ninth Circuit law is a prerequisite to surcharge (and again is an issue with respect to which the Debtor has the burden of proof). I'd also note that as a practical matter, it is difficult to grasp how Enigma can be said to have benefited when it is recovering only about 25% on its secured claims on collateral that, per the Huygens Declaration in support of the DIP motion, had a 49% equity cushion at the outset of the case (and particularly given that Enigma's attempt to credit bid at the auction was rebuffed by the Debtor). *See, e.g., Compton*

Impressions v. Queen City Bank, 217 F.3d 1256 (9th Cir. 2000) (debtor failed to show creditor had quantifiably benefited where it could have foreclosed on collateral at outset of case in full satisfaction of claims).

- *Second*, even assuming the Debtor could demonstrate a quantifiable benefit to Enigma, that benefit would merely be the “ceiling” on any surcharge: the Debtor would still need to prove that any surcharged expenses were “reasonable and necessary to obtain [such] benefit.” *Golden v. Chicago Title Ins. Co. (In re Choo)*, 273 B.R. 608, 612 (9th Cir. B.A.P. 2002) (quotation and citation omitted). Again, we are continuing to review the documentation provided to us, but with the potential exception of some warehousing expenses, most of what we’ve seen appear to be the general expenses and overhead incurred in administering the estate—those are not the sort of expenses that are subject to section 506(c). To pick one example, I’m at a loss how the Debtor intends to show that the Committee’s professional fees were reasonable and necessary to provide a benefit to Enigma.
- *Finally*, with respect to the deduction of adequate protection payments previously made to Enigma from the sale proceeds, we do not deny that there is some unfavorable (from Enigma’s perspective) law from the B.A.P. regarding allocation of postpetition interest payments to the secured portion of an undersecured creditor’s claim. But I’m unaware of any cases where payments made pursuant to an agreed-upon professional fee budget were similarly deducted (but if there are, then please send any my way and I’ll be happy to consider them).

Regardless, the Debtor’s proposal ignores that there has been a substantial diminution in value, based on (i) the evaporation of the equity cushion that according to the Debtor existed as of the petition date and (ii) the fact that close to 600 machines seem to have vanished from thin air during the course of the case. On that latter point, according to the Huygens Declaration, Enigma’s UCC filing, and the inventory schedule developed by Province (re-attached here), at least 3,500 DCMs were pledged in favor of Enigma; pursuant to the various rejection motions, about 540 Enigma machines were abandoned to it. That means there should be roughly 2,950 machines in Enigma’s collateral package being sold—and yet, according to the Debtor, that number is instead less than 2,400. Either way, there has been a clear diminution in the value of Enigma’s security package, and pursuant to the Final DIP Order, Enigma is to be compensated for that diminution via postpetition interest payments, professional fee payments, and a superpriority administrative expense claim (with respect to which all rights are reserved).

In light of the Debtor’s high burden of proof, the evidentiary issues described above, and the Debtor’s serious problem in demonstrating adequate protection, we think that \$225,000 fairly compensates the Debtor for costs incurred in storing and disposing of the collateral and avoids a protracted dispute.

Committee Challenge

[REDACTED]

**

In sum, we've provided a proposal that we strongly believe to be a reasonable, risk-adjusted compromise that fairly compensates the Debtor for its actual costs in running this case, and would allow for a smooth and consensual exit from chapter 11. I hope that all would agree that the last thing this case needs at this critical juncture is time-consuming and expensive litigation, and that if there's a consensual path forward to be had then we should do our best to find one. But the demands received by the Debtor and the Committee to date—which would collectively reduce Enigma's expected proceeds by nearly █%—are, candidly, commercially unrealistic and legally unsupportable, and Enigma is ready and willing to litigate these issues to judgment if necessary to vindicate its rights.

I urge you and your respective clients to give serious consideration to this proposal, and I remain available at your convenience to discuss any questions you might have. Thank you.

Best regards,

Andrew

Andrew Kissner

Of Counsel

akissner@mofo.com

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M: +1 (646) 510-5704

**MORRISON
FOERSTER**

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Exhibit 2

Guido, Laura

From: Noll, Audrey <anoll@foxrothschild.com>
Sent: Tuesday, March 28, 2023 3:43 PM
To: Jordi Guso; gayda@sewkis.com; LoTempio, Catherine; Matott, Andrew; Kissner, Andrew; Lee, Gary S.; Weinberg, Michael; O'Neal, Sean A.; VanLare, Jane
Cc: Axelrod, Brett; Chlum, Patricia M.
Subject: Cash Cloud: Motion for Approval of Plan Sponsor Bid Procedures
Attachments: Motion for Approval of Plan Sponsor Bid Procedures(144092388.1)-C.docx
Categories: Saving to DM

External Email

Privileged and Confidential

Hello All:

In the interests of time, I'm circulating a DRAFT of the Motion for Approval of Plan Sponsor Bid Procedures that we intend to file by March 31. This is still subject to internal review and comment.

Please note that we are in the process of conforming the Exhibits to the Motion (as indicated therein) and will circulate a revised draft tomorrow, when completed.

In the meantime, the attached draft Motion lays out the process and deadlines proposed.

Best,

Audrey Noll
Financial Restructuring & Bankruptcy
Fox Rothschild LLP
U.S. Direct: 702.699.5160

Israel Cell: +972.52.756.3770

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FR DRAFT 3/28/23

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Counsel for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

CASH CLOUD, INC.,
d/b/a COIN CLOUD,

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**DEBTOR'S MOTION FOR ENTRY OF
AN ORDER:
(A) APPROVING AUCTION AND
BIDDING PROCEDURES FOR
POTENTIAL PLAN SPONSORS,
(B) APPROVING FORM NOTICE TO BE
PROVIDED TO INTERESTED PARTIES;
AND
(C) SCHEDULING A CONFIRMATION
HEARING FOR THE HIGHEST OR
OTHERWISE BEST PLAN**

Hearing Date: OST Pending

Hearing Time: OST Pending

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(702) 597-5503 (fax)

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FR DRAFT 3/28/23**I.****INTRODUCTION**

Cash Cloud, Inc. (the “Debtor” or “Cash Cloud”), debtor and debtor in possession in the above-captioned chapter 11 case (the “Chapter 11 Case”), by and through its undersigned counsel, Fox Rothschild LLP (“Counsel”), hereby submits this motion (the “Motion”) pursuant to sections 105(a) and 365 of title 11 of the United States Code (the “Bankruptcy Code”)¹ and Rules 2002 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order (the “Bidding Procedures Order”), substantially in the form annexed hereto as **Exhibit 1**, (i) approving and authorizing the bidding procedures, substantially in the form annexed to the Bidding Procedures Order as **Exhibit A** (the “Bidding Procedures”),² to select a sponsor (“Plan Sponsor”) in connection with a proposed plan of reorganization (the “Plan”) for Debtor; (ii) approving and authorizing an auction process (the “Auction”) to select the Plan Sponsor proposing the highest and best Plan in accordance with the Bidding Procedures; (iii) approving the form and manner of notice of the bidding procedures (the “Bidding Procedures Notice”), substantially in the form annexed to the Bidding Procedures Order as **Exhibit B**; (iv) approving the form and manner of notice of potential assumption of certain executory contracts and unexpired leases and related cure amounts (the “Cure Notice”), substantially in the form annexed to the Bidding Procedures Order as **Exhibit C**; (v) scheduling a hearing to confirm the Plan proposed by the successful Plan Sponsor, and, if applicable, alternate Plan Sponsor resulting from the Auction; and (vi) granting the Debtor such other and further relief as is just and appropriate under the circumstances.

¹ Unless otherwise noted herein, all references to “§” or “Section” are to sections of the Bankruptcy Code.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures. To the extent that the Motion and the Bidding Procedures are inconsistent, the Bidding Procedures shall control.

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The proposed timeline is as follows:

Date	Event
April 21, 2023	Deadline for selecting Stalking Horse Plan Proponent
April 24, 2023	Hearing on this Motion
April 27, 2023	Service of Bidding Procedures Notice and Cure Notice
April 28, 2023	Deadline for filing Stalking Horse Plan
May 12, 2023	Deadline for counterparty objections to the Cure Notice
May 18, 2023	Deadline for replies to objections to the Cure Notice
May 22, 2023	Hearing on Cure Amounts
May 25, 2023	Bid Deadline for Qualified Plan Sponsor Bids
June 1, 2023	Auction
June 12, 2023	Deadline for objections to Confirmation
June 19, 2023	Deadline for replies to objections to Confirmation
June 26, 2023	Confirmation Hearing

On February 8, 2023, the Debtor filed the DIP Financing Motion (defined below), seeking approval of the DIP Financing Agreement (defined below), which was approved by this Court on an interim basis [ECF No. 132, entered on February 17, 2023] and a final basis [ECF No. 315, entered on March 20, 2023].

The DIP Financing Agreement requires, among other things, that the Debtor must meet certain milestones with respect to either (a) the filing of a Plan that provides for payment of the DIP Loan in full, or (b) a motion seeking approval of bidding procedures for a sale of the Debtor's assets, each in a form acceptable to CKDL Credit, LLC (the "DIP Lender"). In order to meet the milestones and avoid a default, the Debtor is filing this Bid Procedures Motion to obtain approval of the bid procedures in sufficient time to select the Plan Sponsor proposing the highest and best Plan and to file such Plan before the milestone deadline.

The Court has authorized the Debtor to employ Province, LLC ("Province") as the Debtor's financial advisor [ECF No. 120]. Province has been working with the Debtor to develop a

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FR DRAFT 3/28/23

1 restructuring plan, including obtaining and evaluating indications of interest. Province has prepared
2 draft marketing materials and set up a data room to provide relevant information to Potential Plan
3 Sponsors.

4 For the reasons set forth below in greater detail, and in order to conduct a full and fair bidding
5 process for the purpose of maximizing the consideration to be received by the Debtor's creditors
6 under a Plan, the Debtor respectfully requests that the Court grant the Motion.

7 This Motion is based upon the *Declaration of Christopher Andrew McAlary* (the "McAlary
8 Declaration") and the *Declaration of Daniel Moses* (the "Moses Declaration") filed concurrently
9 herewith, the *Omnibus Declaration of Christopher Andrew McAlary In Support of Emergency First*
10 *Day Motions* [ECF No. 19] (the "Omnibus Declaration"), all other pleadings and papers filed in the
11 Chapter 11 Case, and the following:

12 **II.**

13 **JURISDICTION AND VENUE**

14 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This
15 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and venue is proper in this district pursuant to
16 28 U.S.C. §§ 1408 and 1409.

17 2. The statutory bases for the relief requested herein are §§ 105(a), 365(a) & 365(b),
18 Bankruptcy Rules 2002 & 6006.

19 3. Pursuant to Rule 9014.2 of the Local Rules of Bankruptcy Practice, Debtor consents
20 to entry of final order(s) or judgment(s) by the bankruptcy judge if it is determined that the bankruptcy
21 judge, absent consent of the parties, cannot enter final orders or judgments consistent with Article III
22 of the United States Constitution.

23 **III.**

24 **RELIEF REQUESTED**

25 4. Pursuant to Sections 105(a) and 365, Bankruptcy Rules 2002 and 6006, Debtor
26 requests the immediate entry of the Bidding Procedures Order (annexed hereto as **Exhibit 1**), which,
27 *inter alia*, approves the Bidding Procedures (annexed to the Bidding Procedures Order as **Exhibit A**),
28 approves the Bidding Procedures Notice (annexed to the Bidding Procedures Order as **Exhibit B**),

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FR DRAFT 3/28/23

1 approves the Cure Notice (annexed to the Bidding Procedures Order as **Exhibit C**, and grants related
2 relief.

IV.

STATEMENT OF FACTS

A. General Background

5 5. On February 7, 2023 (the “Petition Date”), Debtor filed a voluntary petition for relief
6 under of chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).
7

8 6. The factual background relating to Debtor’s commencement of the Chapter 11 Case is
9 set forth in detail in the *Omnibus Declaration* [ECF No. 19] and is incorporated for all purposes herein
10 by this reference.

11 7. The Debtor is continuing in possession of its properties and operating and managing
12 its business, as debtor in possession, pursuant to Bankruptcy Code sections 1107 and 1108. See
13 generally Chapter 11 Case Docket.

14 8. On February 8, 2023, the Debtor filed a *Motion for Interim and Final Orders: (I)*
15 *Authorizing Debtor to Obtain Post-petition Senior Secured, Superpriority Financing; (II) Granting*
16 *Liens and Superpriority Claims; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing;*
17 *and (V) Granting Related Relief* [ECF No. 35] (the “DIP Financing Motion”), seeking approving of
18 a financing agreement (the “DIP Financing Agreement”) for a debtor in possession loan in the
19 aggregate amount of \$5 million (the “DIP Loan”). On February 17, 2023, the Court entered its
20 Interim Order approving the DIP Financing Motion on an interim basis [ECF No. 132] and a final
21 basis [ECF No. 315, entered on March 20, 2023].

22 9. The DIP Financing Agreement contains among the following milestones
23 (“Milestones”): (a) the Debtor’s filing of either a Plan or a motion seeking approval of bidding
24 procedures for a sale of the Debtor’s assets no later than April 28, 2023; (b) the entry of the
25 Confirmation Order by no later than June 28, 2023.

26 10. On February 7, 2023, the Debtor filed an Emergency First Day *Application for Order*
27 *Authorizing Retention and Employment of Province, LLC as Debtor’s Financial Advisor, Effective as*
28 *of the Petition Date* (the “Province Employment Application”) [ECF No. 15], requesting the

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FR DRAFT 3/28/23

employment of Province as the Debtor's financial advisor to, among other things, explore restructuring options for the Debtor and search for potential Plan Sponsors. On February 16, 2023, the Court entered an Order granting the Province Employment Application [ECF No. 120].

11. On February 17, 2023, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") [ECF No. 131, as amended on February 28, 2023, ECF No. 177].

12. In order to have a transparent process in searching and selecting potential Plan Sponsors, the Debtor and Province have worked in consultation with the Committee, the DIP Lender, Genesis Global Holdco, LLC ("Genesis"), and Enigma Securities Limited ("Enigma" and, collectively, the "Consultation Parties"), who have provided input throughout this process.

B. Facts Relevant To Motion

1. The Debtor's Business

13. Cash Cloud was organized in 2014 for the purpose of providing a platform for customers to buy and sell digital currencies through Digital Currency Machines ("DCMs") distributed across the United States. All Cash Cloud machines are DCMs offering two-way functionality, over 30 digital currency options, an advanced user interface and a custom non-custodial companion wallet app (available on the Apple App Store and the Google Play Store). As of December 31, 2022, Cash Cloud operated approximately 4800 DCMs throughout the United States and Brazil, installed in some of the largest convenience, grocery and liquor store chains and prestigious malls ("Hosts"). See Omnibus Declaration, ¶¶ 6-10.

14. Cash Cloud has entered into agreements ("Host Agreements") with various Hosts, whereby the Cash Cloud installs a DCM at the Host's location. Cash Cloud agrees to pay the Host either a fixed monthly rental payment and internet charges or a variable portion of the profit of the machine (as defined in the agreements) for the ability to utilize the Host's storefront location to facilitate the buying and selling of digital currencies. The Host Agreements typically have a 3 to a 7-year term, with automatic renewals, unless terminated by either party. See Omnibus Declaration, ¶ 21.

15. Cash Cloud has secured debt to the DIP Lender (in the approximate amount of

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FR DRAFT 3/28/23

\$5,000,000), to Genesis (in the approximate amount of \$7,784,780) and to Enigma (in the approximate amount of \$7,573,669).³ See Omnibus Declaration, ¶ 18.

2. The Debtor's Marketing Efforts

16. Starting months before the Petition Date, Debtor has been seeking to source financing to enable the Debtor's restructuring. Prior to the approval of the DIP Loan, Debtor had limited resources necessary to seek new financing for Cash Cloud's continued operations. However, the DIP Financing Agreement approves a budget providing for the employment of Province to seek financing for a restructuring of the business (and, as an alternative, to market the Debtor's assets and hold a corresponding auction and sale, if necessary). See McAlary Declaration, ¶ ____.

17. As part of the marketing efforts, Province, in concert with the Debtor and in consultation with the Consultation Parties, will send out a marketing teaser describing the Debtor's business and the Plan Sponsor auction process to entities known to Province, as well as entities that may be recommended by the Consultation Parties or other creditors. Province has contacted forty eight (48) potential interested parties to date, with fifteen (15) signing nondisclosure/confidentiality agreements (each an "NDA"). See Moses Declaration, ¶ ____.

18. In addition, the Debtor will be posting the Bid Deadline, the Stalking Horse Plan (defined below), and Auction date on the website for the Debtor's claims agent Stretto, Inc., at <https://cases.stretto.com/CashCloud>. See McAlary Declaration, ¶ ____.

19. As set forth more fully below, the Debtor, together with Province and with input from the Consultation Parties, intends to pursue its marketing efforts through the Bid Deadline to continue to market test the Stalking Horse Plan. Potential Plan Sponsors will be required to execute NDAs. Each party that submits an NDA will be granted access to an electronic data room containing materials

³ Although AVT Nevada L.P. ("AVT") filed a UCC-1 Financing Statement (the "AVT UCC-1") against the leased DCMs, the AVT Financing Arrangement purports to be a "true lease," with AVT filing the AVT UCC-1 solely as a precautionary measure. Accordingly, Debtor assumes that AVT is not a secured creditor for the purpose of this Motion, with a reservation of rights on the issue for other contexts. See McAlary Declaration, ¶ ____.

Additionally, Cole Kepro International, LLC ("Cole Kepro") has asserted a security interest in certain DCMs that it sold to the Debtor in 2021 (the "CK DCMs"). On the Petition Date, Debtor initiated Adversary Proceeding No. 23-01010-mkn by filing a complaint seeking a declaratory judgment that Cole Kepro does not have a security interest in the CK DCMs. See McAlary Declaration, ¶ ____.

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FR DRAFT 3/28/23

and information relating to the Debtor's business (the "Diligence Room"), as Province and Debtor, reasonably deems appropriate. As part of the implementation of the Bidding Procedures, Debtor and Province intend to contact all parties that they believe might be Potential Plan Sponsors and advise them of the opportunity to propose a Plan providing for them to become the owner of equity in the Reorganized Debtor in exchange for a capital infusion/assumption of debt. See McAlary Declaration, ¶ __; Moses Declaration, ¶ __.

3. Stalking Horse Plan Sponsor

20. No later than April 21, 2023, the Debtor, in consultation with the Consultation Parties, intends to designate a Potential Plan Sponsor to be the stalking horse (the "Stalking Horse Plan Sponsor"), based on its proposed Plan (the "Stalking Horse Plan") providing the highest or otherwise best return for the Debtor's creditors and being in the best interests of Debtor and its estate. Such Stalking Horse Plan will be filed on or before April 28, 2023. See McAlary Declaration, ¶ __.

V.

BIDDING PROCEDURES

A. Summary Of Bidding Procedures

21. In connection with the proposal of a Plan, the Debtor submits that conducting a marketing process and Auction in accordance with the bidding procedures among Qualified Plan Sponsors will obtain the highest or otherwise best Plan for the Debtor and its creditors and will maximize the value of Debtor's estate. See McAlary Declaration, ¶ __.

21. The Bidding Procedures are attached to the Bidding Procedures Order as **Exhibit A**. A summary of some of the significant provisions of the Bidding Procedures is set forth below. If there exists any omission or discrepancy between the following summary and the actual terms of the Bidding Procedures, the actual terms of the Bidding Procedures shall control.

1. Assumption And Notice Of Cure Amount

22. In connection with the Plan, Debtor may assume certain executory contracts and unexpired leases (collectively, the "Assumed Contracts") pursuant to section 365(a) of the Bankruptcy Code. To facilitate the assumption of the Assumed Contracts, Debtor proposes the following procedures:

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FR DRAFT 3/28/23

- a. Designation Deadline. In its discretion by written notice to Debtor, each Potential Plan Sponsor shall designate, at any time prior to 5:00 p.m. (prevailing Pacific Time) on May 25, 2023, any contract or lease as an Assumed Contract, provided that the Plan Sponsor shall be responsible for contributing funds for any cure related to the Assumed Contract, pursuant to Bankruptcy Code section 365. Until the confirmation of the Plan, any contract or lease may be removed from the list of the designated Assumed Contracts by the Winning Plan Sponsor.
- b. Notices for the Assumed Contracts. As soon as practicable, Debtor shall serve on all non-Debtor counterparties (the “Counterparties”) to any executory contract or unexpired lease that is capable of being assumed, the Cure Notice in the form attached to the Bidding Procedures Order as Exhibit C, that identifies, to the extent applicable (a) the contract or lease that may be an Assumed Contract, (b) the name of the Counterparty, (c) any applicable cure amount for such contract or lease if it becomes an Assumed Contract (“Cure Amount”), (d) the deadline of May 12, at 5:00 p.m. (prevailing Pacific Time) (the “Contract Objection Deadline”) by which all Counterparties must file any “Contract Objection” either to (i) the Cure Amount set forth on the Cure Notice or (ii) to the assumption of such contract or lease, (d) the deadline of May 18, at 5:00 p.m. (prevailing Pacific Time) (the “Reply Deadline”) by which Debtor, must file a reply to any Contract Objection filed on or before the Contract Objection Deadline, and (e) [May 22, 2023] as the date of the hearing, whereby the Court shall determine all Cure Amounts and Contract Objections (the “Contract Hearing”); provided, however, that the presence of a contract or lease on the Cure Notice does not constitute an admission that such contract or lease is an executory contract or unexpired lease and does not bar (i) any Qualified Plan Sponsor from excluding any such contract or lease from its list of the Assumed Contracts or (ii) the Winning Plan Sponsor or the Debtor from excluding any such contract or lease from the list of Assumed Contracts under the Winning Plan.

23. In the event that any Counterparty does not timely file a Contract Objection, such Counterparty shall be (i) deemed to have consented to the applicable Cure Amount, if any, and bound to such corresponding Cure Amount, (ii) forever barred and estopped from asserting a disputing Cure Amount, (iii) deemed to have agreed that all defaults under the applicable contract or lease arising or continuing prior to the effective date of the assumption have been cured upon payment of the Cure Amount (if any), and (iv) forever barred and estopped from objecting to the assumption of such contract or lease.

24. If any Counterparty timely files a Contract Objection that cannot be resolved by Debtor and the Counterparty, the Court shall resolve such Contract Objection at the Contract Hearing.

2. Stalking Horse Bidding Protections

25. As noted above, the Debtor, in consultation with the Consultation Parties, will select

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FR DRAFT 3/28/23

the Stalking Horse Plan Proponent. To increase the competitive nature of the process, the Stalking Horse Plan Proponent shall be awarded stalking horse protections, including a break-up fee in an amount not to exceed 3% of its cash contribution under the Stalking Horse Plan and an expense reimbursement not to exceed \$150,000.00 (the “Break-Up Fee”). The Bidding Procedures provide that any Break-Up Fee, to the extent payable, shall only be paid from proceeds received by Debtor at the confirmation of a Plan proposed by a party other than the Stalking Horse Plan Proponent. Unless Debtor receives a higher or better Qualified Plan Term Sheet prior to the Auction, the Opening Bid at the Auction shall be the Stalking Horse Plan.

3. Requirements To Participate In The Auction

26. The Bidding Procedures provide that only Qualified Plan Sponsors may participate in the Auction. To be a Qualified Plan Sponsor, a party wishing to submit a Plan Term Sheet must first become a “Potential Plan Sponsor”, which requires that an interested party execute, or shall be currently subject to an NDA, in form and substance satisfactory to Debtor. Upon qualifying as a Potential Plan Sponsor, a party may receive due diligence information from Debtor, including access to Debtor’s Diligence Room and potentially other nonpublic information relating to Debtor’s business.

27. The Bidding Procedures also set forth the requirements for a Potential Plan Sponsor to become a Qualified Plan Sponsor, including (without limitation) that a Potential Plan Sponsor: (i) submit a Plan Term Sheet by the Bid Deadline to the Bid Deadline Recipients identified in the Bidding Procedures; (ii) provide a proposed Plan, based on, and redlined against, the Stalking Horse Plan; (iii) deliver a deposit by wire transfer in an amount equal to **ten percent (10%)** of the Potential Plan Sponsor’s proposed cash contribution under its proposed Plan; (iv) demonstrate that it has the financial wherewithal and ability to fund its proposed Plan in accordance with the schedule contemplated by the Bidding Procedures; and (v) disclose any connections to Debtor and affiliated persons. The Bidding Procedures further provide that all Plan Term Sheets shall propose, in exchange for the Plan Sponsor’s acquisition of equity in the Reorganized Debtor, a combination of a cash contribution (sufficient to satisfy all Cure Amounts and all other claims against the Debtor that must be satisfied in cash on the effective date of the Plan), assumption of debt and/or, if applicable,

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FR DRAFT 3/28/23

conversion of allowed secured debt, and that Plan Term Sheets shall be evaluated based upon the amount of cash and other consideration.

28. A Plan Term Sheet that satisfies each of the Bid Requirements (as defined below), as determined by Debtor in its reasonable discretion, in consultation with the Consultation Parties, shall constitute a “Qualified Plan Term Sheet,” and such Potential Plan Sponsor submitting such Plan Term Sheet will be deemed a “Qualified Plan Sponsor.” Not later than one (1) business day before the commencement of any Auction, Debtor shall file and serve on each Potential Plan Sponsor, and the Consultation Parties, a notice indicating the identity of all Qualified Plan Sponsors, and a copy of the Plan Term Sheet which is deemed to be the highest and otherwise best Qualified Plan Term Sheet (the “Opening Plan Term Sheet”).

a. Auction

29. If Debtor receives more than one Qualified Plan Term Sheet, Debtor will conduct an Auction at the offices of Fox Rothschild, 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135 (or by such other remote videoconference or telephonic means noticed to the Qualified Plan Sponsors as determined by Debtor in its discretion), commencing at 9:00 a.m. Pacific Time (the “Auction”), on June 1, 2023, in accordance with the Bidding Procedures.

30. The Auction shall be governed by the following procedures:

- (a) only Qualified Plan Sponsors, in person or through duly authorized representatives at the Auction may bid at the Auction, and every Qualified Plan Sponsor must have at least one (1) such duly authorized representative with authority to bind the Qualified Plan Sponsor at the Auction;
- (b) only such authorized representatives of each of the Qualified Plan Sponsors, Debtor, and the Consultation Parties shall be permitted to attend the Auction;
- (c) permitted participants may attend in person, or if they prefer to participate by videoconference or telephonic means, must notify Debtor’s counsel of such preference no later than 24 hours prior to the Auction;
- (d) the Stalking Horse Plan Sponsor or other Qualified Plan Sponsor who has submitted the highest or otherwise best Qualified Plan Term Sheet shall be the opening Plan Sponsor (the “Opening Plan Sponsor”) and its bid shall be the opening bid (the “Opening Plan Term Sheet”);
- (e) bidding shall commence on the terms of the Opening Plan Term Sheet. The Opening Plan Term Sheet shall be announced on the record by Debtor at or

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FR DRAFT 3/28/23

before the commencement of the Auction. Other Qualified Plan Sponsors may then submit a successive Plan Term Sheet with a cash contribution greater by at least the Break-Up Fee (\$150,000 plus 3% of the cash component of the Stalking Horse Plan) than the Opening Plan Term Sheet, and all subsequent Plan Term Sheets must contain a cash contribution at least \$100,000 higher than the previous Plan Term Sheet. The then highest or otherwise best Plan Term Sheet shall be announced on the record prior to the start of each round of bidding;

- (f) Qualified Plan Sponsors shall have the right to submit additional Plan Term Sheets that include modifications to their Qualified Plan Term Sheet at or prior to the Auction, consistent herewith, provided that any such modifications to the Qualified Plan Term Sheet, on an aggregate basis and viewed in whole, shall not be less favorable to Debtor than any prior Plan Term Sheet by such party (as reasonably determined by Debtor, in consultation with the Consultation Parties). Debtor, in consultation with the Consultation Parties, reserve the right to separately negotiate the terms of any Qualified Plan Term Sheet at the Auction, provided the terms are fully disclosed at the time such Qualified Plan Term Sheet is formally submitted;
- (g) the bidding will be transcribed by a certified court reporter employed by Debtor to ensure an accurate recording of the bidding at the Auction;
- (h) each Qualified Plan Sponsor shall be required to confirm that it has not engaged in any collusion with respect to the bidding; and
- (i) absent irregularities in the conduct of the Auction, Debtor will not consider any Potential Plan Term Sheet made after the Auction is closed.

b. Acceptance Of The Winning Plan Term Sheet

31. Upon the conclusion of the Auction (if conducted), Debtor, in the exercise of its reasonable, good-faith business judgment and after consultation with the Consultation Parties, shall identify (i) the Winning Plan Term Sheet, which is the highest or otherwise best Qualified Plan Term Sheet submitted at the conclusion of the Auction; and (ii) if more than two Qualified Plan Sponsors, the next highest or otherwise best Qualified Plan Term Sheet (the “Back-Up Plan Term Sheet” and the party submitting the Back-Up Plan Term Sheet (the “Back-Up Plan Sponsor”) which, in each case, may be the Stalking Horse Plan Proponent. Each of the Winning Plan Sponsor and the Back-Up Plan Sponsor shall be required to execute a definitive Plan conformed to the provisions of the Winning Plan Term Sheet and the Back-Up Plan Term Sheet, as applicable, as soon as practicable but, in any event, prior to the Confirmation Hearing. For the purposes of these Plan Bidding Procedures, the definitive Plan executed by the (i) Winning Plan Sponsor shall be defined as the

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FR DRAFT 3/28/23

1 “Winning Plan” and (ii) Back-Up Plan Sponsor shall be defined as the “Back-Up Plan”.

2 32. The Back-Up Plan Sponsor must keep the Back-Up Plan open and irrevocable until
3 15 days after the entry of the Confirmation Order.

4 33. If an Auction is held, Debtor shall be deemed to have accepted a Qualified Plan Term
5 Sheet as the winner of the Auction only when: (i) such Plan Term Sheet is declared the Winning Plan
6 Term Sheet; (ii) a definitive Plan has been executed and filed in respect thereof; and (iii) any
7 additional Deposit required as a result of a Plan Term Sheet submitted at the Auction (as required by
8 the Bidding Procedures) has been provided to Debtor.

9 34. If an Auction is not held because there are no Qualified Plan Term Sheets other than
10 the Stalking Horse Plan, Debtor shall be deemed to have accepted the Stalking Horse Plan as the
11 Winning Plan.

12 35. In each case, Debtor’s acceptance is conditioned upon confirmation by the Court of
13 the Winning Plan of (if applicable) the Back-Up Plan.

14 **VI.**

15 **THE CONFIRMATION HEARING**

16 36. As part of this Motion, Debtor asks this Court to schedule a confirmation hearing (the
17 “Confirmation Hearing”) no later than June 26, 2023. Debtor will present the results of the Auction
18 to the Court at the Confirmation Hearing, at which time certain findings will be sought from the Court
19 regarding the Auction and the Plan, including, among other things, that: (i) the Auction was properly
20 conducted, and the Winning Plan Sponsor and the Back-Up Plan Sponsor were properly selected, in
21 accordance with the Bidding Procedures; (ii) the Auction was fair in substance and procedure; (iii)
22 confirmation of the Winning Plan (or if applicable, the Back-Up Plan) will provide the highest or
23 otherwise best return for the Debtor’s creditors and is in the best interests of Debtor and its estate;
24 and (iv) the Plan meets all requirements for confirmation under the Bankruptcy Code.

25 37. At the Confirmation Hearing, Debtor shall also request, as part of the Confirmation
26 Order, authorization from the Bankruptcy Court to accept the Back-Up Plan, and confirm such Plan,
27 if the Winning Plan fails to be consummated when and as required by its terms, without further order
28 of the Bankruptcy Court. Debtor and the Back-Up Plan Sponsor shall be bound to consummate the

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FR DRAFT 3/28/23

Back-Up Plan if the Winning Plan fails to consummate, at which time the Back-Up Plan Sponsor shall be deemed the Winning Plan Sponsor. Debtor shall promptly give notice to the Back-Up Plan Sponsor if the Winning Plan fails to consummate and shall provide the Back-Up Plan Sponsor a reasonable period within which to fund the Back-Up Plan.

VII.

RETURN OF DEPOSITS

38. Upon the Effective Date of the Winning Plan, the Deposit of the Winning Plan Sponsor shall be credited to its cash contribution. If the Winning Plan Sponsor fails to fund the Winning Plan, then its Deposit shall be retained by Debtor.

39. The Deposits of any Qualified Plan Sponsors other than the Winning Plan Sponsor and the Back-Up Plan Sponsor will be returned within two (2) business days after the conclusion of the Auction; *provided, that*, the Deposit of the Back-Up Plan Sponsor shall be returned to the Back-Up Plan Sponsor on the fifteenth day (15th) after entry of the Confirmation Order.

VIII.

NOTICE PROCEDURES

40. Debtor proposes that any objections to confirmation of the Winning Plan (a “Confirmation Objection”), must: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) set forth the specific basis for the Confirmation Objection; (iv) be filed with the Court, together with any evidence in support of such Confirmation Objection and proof of service, on or before the Confirmation Objection Deadline set forth in the Bidding Procedures Order; and (v) be served, so as to be actually received on or before the Confirmation Objection Deadline, upon Debtor’s counsel, the United States Trustee, and the Consultation Parties (the “Notice Parties”). If a Confirmation Objection is not filed and served on or before the Confirmation Objection Deadline, Debtor requests that the objecting party be barred from objecting to confirmation of the Winning Plan and not be heard at the Confirmation Hearing, and this Court may enter the Confirmation Order without further notice to such party. Debtor also requests that the Court approve the form of the Bidding Procedures Notice substantially in the form attached hereto as **Exhibit B**. Debtor will serve a copy of the Bidding Procedures Notice on the Notice Parties, the Counterparties, and all parties

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FR DRAFT 3/28/23

which Debtor is required to serve pursuant to Bankruptcy Rule 6004 (the “Bidding Procedures Notice Parties”).

41. Debtor proposes to file with the Court and serve the Bidding Procedures Notice within five (5) business days following entry of the Bidding Procedures Order, by first-class mail, postage prepaid on the Bidding Procedures Notice Parties. The Bidding Procedures Notice provides that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may either (a) download them from the website for the Debtor’s claims agent Stretto, Inc., at <https://cases.stretto.com/CashCloud>, or (b) make such a request in writing to Fox Rothschild LLP, Attn: Brett A. Axelrod, 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135 or by emailing baxelrod@foxrothschild.com or calling (702) 699-5901.

42. Debtor submits that the foregoing notices comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, Auction, the Winning Plan, and Confirmation Hearing to Debtor’s creditors and other parties in interest as well as to those who have expressed an interest or are likely to express an interest in submitting a Plan Term Sheet. Based on the foregoing, Debtor respectfully requests that this Court approve these proposed notice procedures.

IX.

RESERVATION OF RIGHTS IN CONNECTION WITH BIDDING PROCEDURES AND AUCTION PROCESS

43. Debtor, in each case after consultation with the Consultation Parties: (i) may waive any requirements for a Potential Plan Sponsor to become a Qualified Plan Sponsor; (ii) may waive any requirements for a Plan Term Sheet to become a Qualified Plan Term Sheet; (iii) after each round of bidding at the Auction may determine which Qualified Plan Term Sheet, if any, is the highest or otherwise best offer and the value thereof; (iv) may reject, at any time, any bid that Debtor deems to be (a) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or any other orders applicable to Debtor, or (b) contrary to the best interests of Debtor, its estate, and stakeholders; (v) may impose additional terms and conditions and otherwise modify the Bidding

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FR DRAFT 3/28/23

Procedures at any time which, in its judgment, will better promote the goals of the Auction; and (vi) may adjourn the Auction.

X.

ARGUMENT

A. Approval of the Bidding Procedures Is Appropriate and in the Best Interests of Debtor and Its Stakeholders

Section 105(a) provides in pertinent part that “[t]he Court may issue any order, process or judgment that is necessary and appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

Neither the Bankruptcy Code nor the Bankruptcy Rules contain specific provisions with respect to the procedures to be employed by a debtor in conducting an auction. Nonetheless, as one court has stated, “[i]t is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [debtors’] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.” *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988). Additionally, courts have long recognized the need for competitive bidding at hearings: “[c]ompetitive bidding yields higher offers and thus benefits the estate. Therefore, the objective is ‘to maximize bidding, not restrict it.’” *Id.*; see also *Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor’s fiduciary duties included maximizing and protecting the value of the estate’s assets); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (“[A] primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor’s estate and, therefore, are appropriate. See *Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 536-37 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide benefit to debtor’s estate).

Here, the Bidding Procedures are designed to promote the paramount goal of any proposed Plan for Debtor: maximizing the return to creditors and benefit to the estate. The Bidding Procedures provide for an orderly and appropriately competitive process through which interested parties may

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FR DRAFT 3/28/23

submit proposed Plan Term Sheets. Specifically, Debtor, with the assistance of its advisors, has structured the Bidding Procedures to promote active bidding by interested parties and to confirm the highest or otherwise best Plan for the Debtor. Additionally, the Bidding Procedures will allow Debtor to conduct the Auction in a fair and transparent manner that will encourage participation by financially capable Plan Sponsors with demonstrated ability to consummate a timely Plan. Accordingly, the Bidding Procedures should be approved because, under the circumstances, they are reasonable, appropriate and in the best interests of Debtor, its estate, creditors, and all parties in interest.

B. The Break-Up Fee Is In The Best Interests Of Debtor's Estate

Breakup fees (including an expense reimbursement component) are a normal and oftentimes necessary component of the bankruptcy auction process. In particular, such protection encourages a potential investor to invest the requisite time, money, and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. *See, e.g., Integrated Resources, Inc.*, 147 B.R. at 660 (noting that fees may be legitimately necessary to convince a “white knight” to offer an initial bid, for the expenses such bidder incurs and the risks such bidder faces by having its offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, “bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence”); *In re Marrose Corp.*, 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that “agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding that bidding incentives may be “legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”) (citations omitted).

A proposed bidding incentive, such as a break-up fee, should be approved when it is in the best interests of the estate. *See In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding incentive provide

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FR DRAFT 3/28/23

some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of section 503(b) govern in the bankruptcy context).

Debtor believes that the proposed Break-Up Fee would fairly and reasonably compensate the Stalking Horse Plan Proponent for taking actions that will benefit Debtor's estate, and compensate the Stalking Horse Plan Proponent for diligence and professional fees incurred in negotiating the terms of the Stalking Horse Plan on an expedited timeline.

Further, the presence of the Stalking Horse Plan Proponent will increase the likelihood that the best possible Plan for the Debtor will be proposed, by permitting other Qualified Plan Proponents to rely on the diligence performed by the Stalking Horse Plan Proponent and to utilize the Stalking Horse Plan as a platform for negotiations and modifications in the context of a competitive bidding process.

Finally, any Break-Up Fee will be paid only if, among other things, the Court confirms a Plan other than the Stalking Horse Plan. Accordingly, no Break-Up Fee will be paid unless a higher and better Plan is proposed and consummated. In sum, the potential Break-Up Fee is reasonable under the circumstances and will enable Debtor to maximize value for creditors and the estate.

C. Assumption Of The Assumed Contracts Is Authorized Under Section 365

In connection with the Plan, Debtor seeks approval of the assumption of all executory contracts and unexpired leases proposed to be assumed by Debtor under the Winning Plan Sponsor (the "Assumed Contracts"). Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Debtor's assumption of the Assigned Contracts will be effective only upon the effective date of the Plan.

Courts in this jurisdiction and others apply a business judgment standard in determining whether to approve a debtor's request to assume or reject executory contracts and unexpired leases. *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665, 670 (9th Cir. 2007) ("In making its determination, a bankruptcy court need engage in 'only a cursory review of a [debtor-in-possession]'s decision to

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FR DRAFT 3/28/23

1 reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a
2 [debtor-in-possession]’s rejection decision “”) (citations omitted); *In re MF Global Holdings Ltd.*,
3 466 B.R. 239, 242 (Bankr. S.D.N.Y. 2012) (“Courts generally will not second-guess a debtor’s
4 business judgment concerning whether the assumption or rejection of an executory contract or
5 unexpired lease would benefit the debtor’s estate”).

6 Section 365(b)(1) of the Bankruptcy Code requires that (a) all outstanding monetary defaults
7 under contracts to be assumed must be cured or, in the alternative, that adequate assurance of prompt
8 cure of such default must be provided prior to assumption of the contract, and (b) that adequate
9 assurance of future performance of such contract or lease must be provided to the relevant
10 counterparty. 11 U.S.C. § 365(b)(1).

11 Debtor has proposed notice procedures in the form of the Cure Notice, which make clear to
12 all counterparties exactly how each Assumed Contract will be cured. Importantly, these procedures
13 afford all contract and lease counterparties time and opportunity to object to proposed Cure Amount.
14 Any timely interposed objection relating to a cure amount or assumption will be resolved by the
15 Bankruptcy Court, and the Winning Plan Sponsor shall only be obligated to pay the cure amount
16 finally determined following the resolution of such dispute.

17 Accordingly, it is requested that the Cure Notice be approved.

18 **XI.**

19 **CONCLUSION**

20 WHEREFORE, Debtor respectfully requests that the Court: (i) grant the Motion; (ii) enter the
21 Bidding Procedures Order (annexed hereto as **Exhibit 1**), which, *inter alia*, (a) approves the Bidding
22 Procedures (annexed to the Bidding Procedures Order as **Exhibit A**), (b) approves the Bidding
23 Procedures Notice (annexed to the Bidding Procedures Order as **Exhibit B**), (c) approves the Cure
24 Notice (annexed to the Bidding Procedures Order as **Exhibit C**), (e) approves the Form Sale Order
25 (annexed to the Bidding Procedures Order as **Exhibit D**), and (f) schedules the Cure Hearing and
26 Confirmation Hearing; and (iii) grant Debtor such other and further relief as is just and appropriate.

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Dated this ___ day of _____, 2023.

FOX ROTHSCHILD LLP

By /s/Brett Axelrod
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EXHIBIT 1
PROPOSED BIDDING PROCEDURES ORDER

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FR DRAFT 3/28/23

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

CASH CLOUD, INC.,
D/B/A/ COIN CLOUD

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**ORDER ESTABLISHING BIDDING
PROCEDURES AND DEADLINES
RELATING TO THE PROPOSAL OF A
PLAN OF REORGANIZATION FOR
DEBTOR**

Hearing Date: , 2023

Hearing Time: .m.

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FR DRAFT 3/28/23

Upon Debtor's Motion For Entry of (I) an Order (A) Approving Auction and Sale Format and Bidding Procedures for Potential Plan Sponsors, (B) Approving Form Notice to be Provided to Interested Parties; and (C) Scheduling a Hearing to Consider Confirmation of the Highest or Otherwise Best Plan (the "Motion");¹ and the Court having determined that the relief sought in the Motion is in the best interests of Debtor, its creditors and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:²

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and over the persons and property affected hereby.

B. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

C. Venue for this case and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The statutory and legal predicates for the relief requested in the Motion and provided for herein are Bankruptcy Code sections 105(a) and 365, Bankruptcy Rules 2002 and 6006, and Local Rule 9014.2.

E. In the Motion, any supplemental briefing in support thereof, and at the Hearing, Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and other interested parties including the Notice Parties, the Counterparties, the Office of the United States Trustee, and all parties which Debtor is required to serve pursuant to Bankruptcy Rule 6006 (collectively, the "Bidding Procedure Notice Parties").

¹ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Motion.

² The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

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FR DRAFT 3/28/23

1 F. Debtor's proposed Bidding Procedures Notice, the Auction, the Auction Procedures,
2 and the hearing to confirm the Winning Plan (the "Sale Hearing") are appropriate and reasonably
3 calculated to provide all interested parties with timely and proper notice, and no other or further notice
4 is required.

5 G. The Bidding Procedures substantially in the form attached to this Order as **Exhibit A**
6 are fair, reasonable, appropriate under the circumstances, in the best interests of the estate and its
7 creditors and are designed to maximize the value of Debtor's estate. Debtor has demonstrated sound
8 business justifications for seeking a Plan Sponsor pursuant to the Bidding Procedures.

9 H. The Break-Up Fee is reasonably calculated to: (1) attract or retain a potentially
10 successful Plan proposal; (2) establish a bid standard or minimum for other Plan Proponents to follow;
11 and (3) attract additional Plan Proponents. Accordingly, in light of the foregoing, the size and nature
12 of Debtor's reorganization, and the efforts that would be expended by the Stalking Horse Plan
13 Proponent, the Break-Up Fee is reasonable and appropriate.

14 I. Entry of this Order at this time is in the best interests of Debtor, its estate and creditors,
15 and all other parties in interest.

16 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

17 1. The Motion is granted.

18 2. All objections to the Motion that have not been withdrawn, waived, or settled and all
19 reservations of rights included therein, are overruled on the merits.

20 3. The Bidding Procedures set forth in **Exhibit A** annexed to this Order are incorporated
21 herein by reference in their entirety, are approved and shall be effective and binding on all parties as
22 if such Bidding Procedures were set forth in this Order.

23 4. The Break-Up Fee is approved. Any Break-Up Fee, to the extent payable, shall only be paid
24 from the cash proceeds received by Debtor at the closing of a Sale with a Qualified Bidder other than
25 the Stalking Horse Bidder.

26 5. The deadline for selecting a Stalking Horse Plan Proponent shall be fixed as April 21,
27 2023.

28 6. The deadline for filing the Stalking Horse Plan shall be fixed as April 28, 2023.

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FR DRAFT 3/28/23

7. The Bid Deadline pursuant to the Bidding Procedures shall be fixed as May 25, 2023;

8. Debtor is authorized and empowered to take such steps, incur and pay such costs and expenses, and do such things as may be reasonably necessary to fulfill the requirements established by this Order, and to conduct the Auction in accordance with the provisions of the Bidding Procedures.

9. The Bidding Procedures Notice annexed as **Exhibit B** to this Order is approved as adequate and appropriate under the circumstances and Debtor is directed and authorized to serve the Bidding Procedures Notice to the Bidding Procedures Notice Parties and post the Bidding Procedures Notice on the website for the Debtor's claims agent Stretto, Inc. (at <https://cases.stretto.com/CashCloud>) within five (5) business days of the date this Order is entered.

10. The Cure Notice annexed as **Exhibit C** to this Order is approved as adequate and appropriate under the circumstances, and Debtor is directed and authorized to serve the Cure Notice upon the Counterparties within five (5) business days of the date this Order is entered. Counterparties must serve any and all objections to: (i) (a) the Cure Amounts set forth on the Cure Notice or (b) to the assumption of such contract or lease, on or before May 12, 2023, at 5:00 p.m. (prevailing Pacific Time) (the "Contract Objection Deadline"). All such objections shall be served on the Objection Notice Parties (defined below) on or before the Cure Objection Deadline and Contract Objection Deadline, respectively.

11. Replies to any disputed Cure Amounts filed on or before the Cure Objection Deadline will be due on or before May 18, 2023, at 5:00 p.m. (prevailing Pacific Time) (the "Cure Reply Deadline"). All disputes regarding any Cure Amounts shall be resolved by the Court, if not previously resolved by Debtor or other party, at the Cure Hearing on May [22], 2023 at __:__ a.m. before the United States Bankruptcy Judge, Courtroom 2, United States Bankruptcy Court, 300 Las Vegas Boulevard South, Las Vegas, Nevada.

12. A hearing to confirm the Winning Plan or any Back-Up Plan resulting from the Auction shall take place on June [26] 2023, at __:__ a.m. before the United States Bankruptcy Judge, Courtroom 2, United States Bankruptcy Court, 300 Las Vegas Boulevard South, Las Vegas, Nevada. Any objections to confirmation (a "Confirmation Objection"), must: (i) be in writing; (ii) comply

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FR DRAFT 3/28/23

with the Bankruptcy Rules and the LRs; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court, 300 Las Vegas Boulevard South, Las Vegas, Nevada, together with proof of service, no later than June 12, 2023 at 5:00 p.m. (prevailing Pacific Time) (the “Confirmation Objection Deadline”); and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon: (a) counsel to Debtor, Fox Rothschild LLP, 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135, Attn: Brett Axelrod; (b) counsel to DIP Lender, (i) Berger Singerman LLP, 1450 Brickell Avenue, Suite 1900, Miami, FL 33131, Attn: Jordi Guso, and (ii) Sylvester & Polednak Ltd., 1731 Village Center Circle, Las Vegas, NV 89134, Attn: Jeffrey R. Sylvester; (c) counsel to Genesis Global Holdco, LLC, Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006, Attn: Sean A. O’Neal and Jane VanLare; (d) counsel to Enigma Securities Limited, (i) Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019, Attn: Gary S. Lee and Andrew Kissner, and (ii) Shea Larsen, 1731 Village Center Circle, Suite 150, Las Vegas, NV 89134, Attn: James Patrick Shea; (e) counsel to the Committee of Unsecured Creditors (the “Committee”), (i) Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004, Attn: John R. Ashmead and Robert J. Gayda, and (ii) McDonald Carano Wilson LLP, 2300 W. Sahara Ave., Suite 1200, Las Vegas, NV 89102 Attn: Ryan J. Works, and (f) the Office of the United States Trustee, 300 Las Vegas Boulevard S., Suite 4300, Las Vegas, NV 89101, Attn: Jared A. Day (collectively, the “Objection Notice Parties”). If a Confirmation Objection is not filed and served on the Objection Notice Parties or before the Confirmation Objection Deadline, the objecting party may be barred from objecting to confirmation of the Winning Plan and may not be heard at the Confirmation Hearing, and this Court may enter the Confirmation Order without further notice to such party. Replies to any Confirmation Objections may be filed no later than June 19, 2023 at 5:00 p.m. (prevailing Pacific Time).

13. The Confirmation Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Confirmation Hearing, and Debtor shall have the exclusive right, in the exercise of its fiduciary obligations and business judgment, and after consultation with the Consultation Parties, to withdraw the Winning Plan at any time subject to, and in accordance with,

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FR DRAFT 3/28/23

the terms of this Order.

14. To the extent the provisions of this Order are inconsistent with the provisions of any Exhibit referenced herein or with the Motion, the provisions of this Order shall control.

15. The Court shall retain exclusive jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, the Auction, and confirmation of any Plan.

Prepared and Respectfully Submitted by:

FOX ROTHSCHILD LLP

By _____
BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
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(702) 262-6899
(702) 597-5503 (fax)

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FR DRAFT 3/28/23

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EXHIBIT A
BIDDING PROCEDURES

[TO BE CONFORMED TO MOTION]

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

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FR DRAFT 3/28/23

BIDDING PROCEDURES [TO BE CONFORMED TO MOTION]

Cash Cloud, Inc. d/b/a Coin Cloud (the “Debtor”) debtor and debtor in possession in the above-captioned chapter 11 case (the “Chapter 11 Case”), proposes to conduct an auction for the Sale (as defined under Paragraph 1 below) of the Assets (as defined under Paragraph 2 below) and will proceed in accordance with the following bid procedures (“Bidding Procedures”) which have been approved pursuant to an Order entered by the United States Bankruptcy Court for the District of Nevada (“Bankruptcy Court”) on _____, 2023 (“Bidding Procedures Order”)¹ in the Chapter 11 Case.

As provided for below, the Debtor is soliciting bids (“Bids”) for the proposed acquisition of the Assets, in accordance with the procedures below, which require, among other requirements, that prospective bidders submit an executed asset purchase agreement. The Debtor will consider all Bids which comply with the terms of these Bidding Procedures.

1. **Sale Proposal.** These Bidding Procedures set forth the terms by which prospective bidders may qualify for and participate in the Auction (as defined under Paragraph 14 below), thereby competing to make the highest or otherwise best offer for the Assets. The sale of the Assets (a “Sale”) shall be free and clear of any and all claims, liens, and other encumbrances, pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”),² with all such liens, claims and encumbrances attaching to the proceeds of the Sale to the same extent and with the same priority as such liens, claims and encumbrances attached to the Assets prior to the Sale.
2. **Assets.** For purposes of a Sale, the “Assets” consist of all of the Debtor’s assets as described in **Schedule 1 to the Stalking Horse APA** annexed hereto as **Exhibit 1**.
3. **“As Is, Where Is” Sale.** Any Sale of the Assets will be transferred on an “as is, where is” basis, with all faults, and without representations or warranties of any kind, nature or description by the Debtor, its agents or estate, whether written, verbal, express, implied, or by operation of law.
4. **Potential Bidders / Execution of NDA/ Financial Information.** To participate in the Auction, any party (a “Potential Bidder”) wishing to submit a Bid to purchase the Assets must execute, or have executed, a nondisclosure agreement (“NDA”) in the form provided by the Debtor’s advisors and in form and substance satisfactory to the Debtor before such Potential Bidder may receive due diligence information from the Debtor, including access to the Debtor’s Diligence Room or other non-public information relating to the Assets. In addition, any Potential Bidder must submit financial information to the Debtor to evidence such Potential Bidder’s ability to consummate the Sale, which information must be reasonably satisfactory to the Debtor in consultation with the Consultation Parties.

¹ All undefined capitalized terms shall have the meanings as set forth in the Bidding Procedures Order.

² Unless specified otherwise, all “§” or “Section” references are to the Bankruptcy Code.

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FR DRAFT 3/28/23

5. **Due Diligence.** After receipt of an executed NDA, the Debtor shall, upon request by the Potential Bidder, provide each Potential Bidder reasonable due diligence information as soon as reasonably practicable after such request, including access to the Debtor's Diligence Room. The Debtor shall not furnish, and shall have no obligation to furnish, any confidential and/or non-public information relating to the Assets or the Debtor (collectively, "Confidential Information"), or grant access to the Debtor's Diligence Room, to (i) any person that does not qualify as a Potential Bidder, or (ii) to any Potential Bidder who, at such time and in the Debtor's reasonable business judgment, in consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.
6. **Representations and Warranties.** The Debtor makes no representation or warranty as to the Confidential Information provided through the due diligence process or otherwise, except to the extent set forth in any Qualified APA (as defined under Paragraph 8 below) entered into between the Debtor and the Winning Bidder (as defined under Paragraph 14 below). No party may conduct any additional due diligence after the Bid Deadline (as defined under Paragraph 7 below).
7. **Bid Deadline.** Potential Bidders must submit their Bids, through mail or through e-mail, so that such Bids are actually received by each of the following parties no later than **July [14], 2023** (the "Bid Deadline"): (i) counsel to the Debtor: Fox Rothschild LLP, Attn: Brett A. Axelrod, 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135 (baxelrod@foxrothschild.com); and (ii) Province, LLC, 2360 Corporate Circle, Ste. 340, Henderson, Nevada, 89074 Attn: Paul Huygens (the "Bid Deadline Recipients"). Bids may be made for some or all of the Assets or any subset thereof. Potential Bidders may either e-mail their Bids to the email addresses listed above or may deliver hard copies of their Bids to the physical addresses listed above so that they are actually received by the Bid Deadline. The Debtor shall have no obligation to consider any other delivery format, such as fax, as being acceptable. Upon receipt, the Debtor shall promptly deliver copies of the Bids to the Consultation Parties. The Debtor may, in its sole discretion after consultation with the Consultation Parties, extend the Bid Deadline until the commencement of the Auction for one or more Potential Bidders without prior notice to any party, but shall have no obligation to do so under any circumstances.
8. **Qualified Bid.** In order to constitute a "Qualified Bid," a Bid must satisfy the following requirements (the "Bid Requirements"):
 - a. be submitted (i) in writing and (ii) be received by the Bid Deadline as set forth in Paragraph 7 of these Bidding Procedures, subject to Paragraph 10 of these Bidding Procedures;
 - b. constitute a good faith, bona fide offer to purchase the Assets in accordance with the terms of a Qualified APA (defined below) for a proposed purchase price ("Purchase Price") identified in such Qualified APA and defined as the "Purchase Price" therein in an amount at least \$ in excess of the Stalking Horse Bid;

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FR DRAFT 3/28/23

- c. identify the legal name of the Potential Bidder (including any direct or indirect equity holders, if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale);
- d. be accompanied by (i) a clean and a duly executed copy of an asset purchase agreement, based on the Stalking Horse APA annexed as **Exhibit 1** hereto together with a redline reflecting any modifications to the Stalking Horse APA, that are required by the bidder (a “Qualified APA”) and (ii) a redline proposed sale order, based on the Form Sale Order attached as an exhibit to the Form APA;
- e. be accompanied by a deposit by wire transfer in the amount of **ten percent (10%) of the aggregate Purchase Price** in certified funds (“Deposit”), to be held in escrow and treated in accordance with the provisions of Paragraph 15 and 17 of these Bidding Procedures;
- f. propose cash and/or credit bid consideration only, and propose cash consideration for all required Cure Amounts of Assigned Contracts other than as may be agreed by any counter party to such Assigned Contracts;
- g. provide sufficient and adequate information to demonstrate to the satisfaction of the Debtor, in consultation with the Consultation Parties, that such Potential Bidder has the financial wherewithal and ability to consummate the Sale in the timeframe contemplated by these Bidding Procedures;
- h. include a written statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and consents to the jurisdiction of the Bankruptcy Court (including waiving any right to a jury trial) in connection with any disputes related to these Bidding Procedures as well as (each as defined below) the Auction, the Sale Hearing, the Sale Order and/or the closing of the Sale;
- i. include a written statement outlining the absence or presence, and details thereof, of any relationship, affiliation, or connection of any kind between the Potential Bidder, on the one hand, and the Debtor and/or any of its affiliates, current or former officers, directors, and/or investors;
- j. not be conditioned on any due diligence, financing, or other contingencies other than entry of the Sale Order, including any contingencies, indemnities or purchase price adjustments of any kind, including, among others, obtaining (i) financing; (ii) shareholder, board of directors or other approval; or (iii) the outcome of completion of due diligence;
- k. include a written statement that the Potential Bidder (i) had an opportunity to conduct due diligence regarding the Assets prior to making its offer and does not require further due diligence, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Acquired Assets in making its bid, and (iii) did not rely upon any written or oral statements, reports, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise,

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FR DRAFT 3/28/23

regarding the Assets, or the completeness of any information provided in connection therewith except as expressly stated in the Bidding Procedures;

- l. remain irrevocable until forty-eight (48) hours after the conclusion of the Sale Hearing or such longer period of time as set forth below if the Potential Bidder is selected as the Winning Bidder or Back-Up Bidder (as defined below); and
- m. states whether the Potential Bidder is willing to serve as a Back-Up Bidder and that its Qualified Bid (or any Qualified Bid as modified at the Auction) shall constitute the Back-Up Bid if the Debtor determines that it qualifies as the Back-Up Bid in accordance with the provisions of Paragraph 15.

9. **Single Bid and Qualified Status of the Stalking Horse Bidder.** If any Qualified Bid, other than the Stalking Horse Bid, is submitted by the Bid Deadline and exceeds the Stalking Horse Bid by \$ [REDACTED], the Debtor shall hold the Auction. However, if there is no Qualified Bid other than the Stalking Horse Bid, the Auction will not be held but the Debtor may proceed with the Sale Hearing and seek approval of the Stalking Horse APA and the Transactions contemplated thereby.

10. **Stalking Horse Bidder and Break-Up Fee.** The Debtor has selected CKDL Credit, LLC (the “Stalking Horse Bidder”) as the Stalking Horse Bidder. The Stalking Horse Bidder shall be deemed a Qualified Bidder and the Stalking Horse Bid shall be deemed a Qualified Bid without further action. The Debtor has granted the Stalking Horse Bidder certain protections, including a break-up fee in an amount not to exceed 2% of the cash consideration of the purchase price and expenses not to exceed \$75,000 under such Qualified Bidder’s Qualified APA (the “Break-Up Fee”). Any Break-Up Fee, to the extent payable, shall only be paid from proceeds received by the Debtor at the closing of a Sale to a Qualified Bidder other than the Stalking Horse Bidder. The award of stalking horse protection may occur without further notice (other than an announcement to Potential Bidders no later than the commencement of the Auction) or order of the Bankruptcy Court.

11. **Determination of Qualified Bids.** A Bid that satisfies each of the Bid Requirements, as determined by the Debtor in its reasonable discretion, in consultation with the Consultation Parties, constitutes a “Qualified Bid”, and such Potential Bidder constitutes a “Qualified Bidder.” One day prior to the Auction, the Debtor shall determine, after consultation with the Consultation Parties, whether any submitted bids (other than the Stalking Horse Bid) constitute Qualified Bids. The Debtor shall file and serve on all Potential Bidders that submitted a Bid (regardless of whether such Bid was determined to be a Qualified Bid) a notice (the “Auction Notice”) indicating which Potential Bidders have submitted Qualified Bids. If one or more Bids other than the Stalking Horse Bid are designated as Qualified Bids, the Auction shall be conducted on July [21], 2023, as further described below. The Debtor may decline to designate a bid as a Qualified Bid in its reasonable discretion, and after consultation with the Consultation Parties, if the Bid is reasonably determined to be (a) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or any other orders applicable to the Debtor or terms and conditions of the Sale, or (b) contrary to the best interests of the Debtor, its estate, and its stakeholders.

CONFIDENTIAL AND PRIVILEGED
FR DRAFT 3/28/23

12. **Credit Bidding.** The DIP Lender has credit bid all obligations due pursuant to the DIP Loan, in the Stalking Horse Bid and may do so in any subsequent Bid it makes on the Assets. [OTHER SECURED CREDITORS CREDIT BIDDING?]
13. **Assumption and Assignment of Executory Contract and Unexpired Leases.** In connection with the Sale, the Debtor will sell, assume and assign certain executory contracts and unexpired leases (collectively, the “Assigned Contracts”) as fully set forth in Schedule A to the Qualified Bidder’s APA. To facilitate the Sale and assumption and assignment of the Assigned Contracts to the Stalking Horse Bidder (or other Winning Bidder) pursuant to section 365(f) of the Bankruptcy Code, the Debtor proposes the following procedures:
- a. **Designation Deadline.** In its discretion by written notice to the Debtor, (i) all Potential Bidders (including the Stalking Horse Bidder) shall designate, at any time prior to 5:00 p.m. (prevailing Pacific Time) on [DATE], 2023, any contract or lease as an Assigned Contract, provided that the Bidder shall be responsible for any cure related to the addition of that Assigned Contract, pursuant to Bankruptcy Code section 365 and (ii) each Bidder at any time no later than 5:00 p.m. (prevailing Pacific Time) on [DATE], 2023, shall identify any contract or lease as an Assigned Contract. Until the closing of the Sale, any contract or lease may be removed from the list of the designated Assigned Contracts by the Winning Bidder provided that the Winning Bidder agrees in writing to pay in cash any rejection damages that may arise from the rejection of such contract or lease.
 - b. **Notices for the Assigned Contract or Assigned Leases.** As soon as practicable, the Debtor shall serve on all non-Debtor counterparties (the “Counterparties”) to any executory contract or unexpired lease that is capable of being assumed and assigned to a Winning Bidder, the Cure Notice in the form attached to the Bidding Procedures Order as Exhibit C, that identifies, to the extent applicable (a) the contract or lease that may be an Assigned Contract, (b) the name of the Counterparty, (c) any applicable cure amount for such contract or lease if it becomes an Assigned Contract (“Cure Amount”), (d) the deadline of [DATE], 2023, at 5:00 p.m. (prevailing Pacific Time) (the “Cure Objection Deadline”) by which all Counterparties must file any “Cure Objection” either (i) to the Cure Amount set forth on the Cure Notice or (ii) to the ability of the Stalking Horse Bidder to provide adequate assurance of future performance, (d) the deadline of [DATE], 2023, at 5:00 p.m. (prevailing Pacific Time) (the “Cure Reply Deadline”) by which the Debtor, must file a reply to any Cure Objection filed on or before the Cure Objection Deadline, (e) [DATE], 2023 as the date of the hearing, whereby the Court shall determine all Cure Amounts (the “Cure Hearing”); and (f) the deadline of [DATE], 2023, at 5:00 p.m. (prevailing Pacific Time) (the “Contract Objection Deadline”) by which all Counterparties must file any “Contract Objection” to the proposed assumption and assignment, including any objection to the ability of the Winning Bidder (other than the Stalking Horse Bidder) to provide adequate assurance of future performance; provided, however, that the presence of a contract or lease on the Cure Notice does not constitute an admission that such contract or lease is an executory contract or unexpired lease and does not bar any Qualified Bidder

CONFIDENTIAL AND PRIVILEGED
FR DRAFT 3/28/23

from excluding any such contract or lease from its list of the Assigned Contracts. No later than the first business day after the conclusion of the Auction, the Debtor shall file with the Court and serve on the Counterparties a notice (the “Assignment Notice”) identifying the Winning Bidder and stating the contracts or leases that will be Assigned Contracts, and no other or further notice will be required with respect to the Assigned Contracts.

- c. Cure Objections and Contract Objections. In the event that any Counterparty does not timely file a Cure Objection, such Counterparty shall be (i) deemed to have consented to the applicable Cure Amount, if any, and bound to such corresponding Cure Amount, (ii) forever barred and estopped from asserting a disputing Cure Amount, (iii) deemed to have agreed that all defaults under the applicable Assigned Contract arising or continuing prior to the effective date of the assignment have been cured, and (iv) forever barred and estopped from objecting to the ability of the Stalking Horse Bidder to provide adequate assurance of future performance. In the event that any Counterparty does not timely file a Contract Objection, such Counterparty shall be forever barred and estopped from (a) objecting to the assumption and assignment of the Assigned Contract, including objecting to the ability of a Winning Bidder to provide adequate assurance of future performance, or (b) asserting that any conditions to the assumption and assignment of any Assigned Contract must be satisfied under such Assigned Contract before such Assigned Contract may be assumed and assigned, or that any required consent to any such assignment has not been given. If any Counterparty timely files a Contract Objection that cannot be resolved by the Debtor and the Counterparty, the Court shall resolve such Contract Objection at the Sale Hearing and, upon entry of an order by the Court resolving such Contract Objection, the assumption and assignment shall be deemed effective in accordance with the Sale Order.

14. Auction. If more than one Qualified Bid is received, the Debtor shall conduct an auction on **July[21], 2023**, at the offices of Fox Rothschild, 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135 (or by such other remote videoconference or telephonic means noticed to the Qualified Bidders as determined by the Debtor in its discretion), commencing at **9:00 a.m.** Pacific Time (the “Auction”). The Auction will be conducted to determine the highest or otherwise best Qualified Bid (the “Winning Bid(s),” with such bidder being the “Winning Bidder(s)”). Not later than one (1) business day before the commencement of any Auction, the Debtor shall file and serve on each Potential Bidder and the Consultation Parties, a notice indicating the identity of all Qualified Bidders, and a copy the Bid which is deemed to be the opening bid at the Auction (the “Opening Bid”). Subject to paragraph 17 below, the Auction will be conducted in accordance with the following procedures (the “Auction Procedures”):
- a. only Qualified Bidders, in person or through duly authorized representatives at the Auction may bid at the Auction, and every Qualified Bidder must have at least one (1) such duly authorized representative with authority to bind the Qualified Bidder at the Auction;
 - b. only such authorized representatives of each of the Qualified Bidders, the Debtor, and the Consultation Parties, and their respective legal and financial

CONFIDENTIAL AND PRIVILEGED
FR DRAFT 3/28/23

advisors shall be permitted to attend the Auction;

- c. permitted participants may attend in person, or if they prefer to participate by videoconference or telephonic means, must notify the Debtor's counsel of such preference no later than 24 hours prior to the Auction;
- d. the Stalking Horse Bidder or another Qualified Bidder who has submitted the highest or otherwise best Qualified Bid that is at least \$_____ higher than the Stalking Horse Bid shall be the opening bidder (the "Opening Bidder") and its bid shall be the Opening Bid;
- e. bidding shall commence at the amount of the Opening Bid. The Opening Bid shall be announced on the record by the Debtor at or before the commencement of the Auction. Other Qualified Bidders may then submit a successive bid of at least \$_____ higher than the previous bid. The then highest bid shall be announced on the record prior to the start of each round of bidding.
- f. Qualified Bidders shall have the right to submit additional bids that include modifications to their Qualified APA at or prior to the Auction, consistent herewith, provided that any such modifications to the Qualified APA, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtor than any prior bid by such party (as reasonably determined by the Debtor in consultation with the Consultation Parties). The Debtor, in consultation with the Consultation Parties, reserves the right to separately negotiate the terms of any Qualified Bids at the Auction, provided the terms are fully disclosed at the time such Qualified Bid is formally submitted;
- g. the bidding will be transcribed by a certified court reporter employed by the Debtor to ensure an accurate recording of the bidding at the Auction;
- h. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the proposed Sale and is not in violation of section 363(n); and
- i. absent irregularities in the conduct of the Auction, the Debtor will not consider any Potential Bids made after the Auction is closed.

15. **Acceptance of the Winning Bid and Designation of the Back-Up Bid.**

- a. Upon the conclusion of the Auction (if such Auction is conducted), the Debtor, in the exercise of its reasonable, good-faith business judgment, and after consultation with the Consultation Parties, shall identify (i) the Winning Bid, which is the highest or otherwise best Qualified Bid submitted at the Auction; and (ii) the next highest or otherwise best Qualified Bid (the "Back-Up Bid") and the party submitting the Back-Up Bid, the "Back-Up Bidder"). Each of the Winning Bidder and the Back-Up Bidder shall be required to execute a definitive Qualified Bid conformed to the provisions of the Winning Bid and the Back-Up Bid, as applicable, as soon as practicable but, in no event, prior to the Sale Hearing. For the purposes of these Bidding Procedures, the definitive agreement executed by the (i) Winning Bidder shall be defined as

CONFIDENTIAL AND PRIVILEGED
FR DRAFT 3/28/23

the “Winning Bid APA” and (ii) Back-Up Bidder shall be defined as the “Back-Up Bid APA”.

- b. The Back-Up Bidder (which may be the Stalking Horse Bidder) must keep the Back-Up Bid open and irrevocable until the earlier of (i) 5:00 p.m. (Pacific Time) on the date which is forty-five (45) days after the entry of the Sale Order, or (ii) the date of closing of the Sale to the Winning Bidder.
- c. If an Auction is held, the Debtor shall be deemed to have accepted a Qualified Bid as the winner of the Auction (conditioned upon approval by the Bankruptcy Court) only when (i) such bid is declared the Winning Bid; (ii) definitive documentation has been executed in respect thereof; and (iii) any additional Deposit required as a result of a bid submitted at the Auction (as required by the Bidding Procedures) has been provided to the Debtor. Such acceptance is also conditioned upon approval by the Court of the Winning Bid and (if applicable) the Back-Up Bid or Stalking Horse Bid, as applicable.

16. **Sale Hearing.**

- a. The sale hearing is presently scheduled to take place on July [27], 2023, at [9:30 a.m.] (Pacific Time), or as soon thereafter as counsel may be heard, before the Honorable Mike K. Nakagawa, Courtroom 2, Foley Federal Building, 300 Las Vegas Boulevard South, Las Vegas, Nevada 89101 (the “Sale Hearing”).
- b. Within one day after the conclusion of the Auction (and in advance of the Sale Hearing), the Debtor will file a notice of the Winning Bid and Back-Up Bid, along with copies of the Winning Bid APA, Back-Up Bid APA and the proposed Sale Order (the “Notice of Winning Bid and Back-Up Bid”).
- c. Any objection to the approval of the Winning Bid and Back-Up Bid shall be filed no later than [DATE], 2023, at 5:00 o’clock p.m. (Pacific Time).
- d. The Debtor will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (i) the Auction was properly conducted, and the Winning Bidder and the Back-Up Bidder were properly selected, in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure, (iii) each of the Winning Bid and the Back-Up Bid was a Qualified Bid, (iv) closing of the Sale with the Winning Bid (or if applicable, the Back-Up Bid) will provide the highest or otherwise best value for the Assets and is in the best interests of the Debtor and (v) each of the Winning Bidder and the Back-Up Bidder are deemed to be purchasers of the Assets in good faith as set forth in section 363(m).
- e. At the Sale Hearing, the Debtor shall request the Bankruptcy Court to enter an order approving the Winning Bid and, if applicable, the Back-Up Bid (the “Sale Order”), the form of which is attached as Exhibit D to the Bidding Procedures Order.

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FR DRAFT 3/28/23

- f. At the Sale Hearing, the Debtor shall also request, as part of the Sale Order, authorization from the Bankruptcy Court to accept the Back-Up Bid as the Winning Bid, and consummate such bid, if the Winning Bid is not consummated when and as required by its terms without further order of the Bankruptcy Court. The Debtor and the Back-Up Bidder shall be bound to consummate the Back-Up Bid if the Winning Bid terminates, at which time the Back-Up Bidder shall be deemed the Winning Bidder. The Debtor shall promptly give notice to the Back-Up Bidder if the Winning Bid is terminated and shall provide the Back-Up Bidder a reasonable period within which to close as set forth in the Back-Up Bid APA.

17. **Treatment of Deposit.**

- a. The Deposit of each Potential Bidder shall be held pursuant to an escrow agreement acceptable to the Debtor, subject to the prior consent of the Debtor as to the escrow agent and form of escrow agreement, where such consent is not to be unreasonably withheld.
- b. Upon closing of the Sale with the Winning Bidder, the Deposit of the Winning Bidder shall be credited to the Purchase Price. As shall be set forth in the Winning Bid APA, if the Winning Bidder fails to close, then the Deposit which is the subject of the Winning Bid shall be retained by the Debtor or returned to the Winning Bidder as shall be set forth in the Winning Bid APA or as otherwise ordered by the Bankruptcy Court.
- c. The Deposits of any Qualified Bidders other than the Winning Bidder(s) and the Back-Up Bidder(s) will be returned within two (2) business days after the conclusion of the Sale Hearing; provided, that, the Deposit of the Back-Up Bidder(s) shall be returned to the Back-Up Bidder(s) at the earlier of (i) the closing of the Sale to the Winning Bidder, and (ii) forty-five (45) days after entry of the Sale Order.
- d. The Deposit of any Potential Bidder who is determined not to be a Qualified Bidder shall be returned to such Potential Bidder within two (2) business days of such determination, pursuant to the terms of the applicable escrow agreement.

18. **Payment of the Break-Up Fee.** If the Stalking Horse Bidder is not the Winning Bidder, the Debtor shall pay the Break-Up Fee to such Stalking Horse Bidder as set forth in the agreement between the Debtor and the Stalking Horse Bidder providing for such Break-Up Fee, but in no event shall payment be any earlier than the time of the consummation of the Sale of the Assets, and shall only be paid from the proceeds of such Sale.

19. **Reservation of Rights.** THE DEBTOR RESERVES ITS RIGHTS TO MODIFY THESE BIDDING PROCEDURES IN ANY MANNER, IN CONSULTATION WITH THE CONSULTATION PARTIES, THAT WILL BEST PROMOTE THE GOALS OF THE BIDDING PROCESS. THE DEBTOR FURTHER RESERVES ITS RIGHTS, IN CONSULTATION WITH THE

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CONSULTATION PARTIES TO IMPOSE, AT OR PRIOR TO THE AUCTION, ADDITIONAL TERMS AND CONDITIONS ON THE SALE OF THE ASSETS, INCLUDING, WITHOUT LIMITATION, EXTENDING THE DEADLINES SET FORTH IN THESE BIDDING PROCEDURES, AND ADJOURNING THE AUCTION AT OR PRIOR TO THE AUCTION AND/OR ADJOURNING THE SALE HEARING PRIOR TO SUCH HEARING OR IN OPEN COURT WITHOUT FURTHER NOTICE. THE DEBTOR RESERVES THE RIGHT, AT ANY TIME, FOR ANY REASON AND IN ITS REASONABLE BUSINESS JUDGMENT, TO DECLINE TO PURSUE THE SALE AND TO WITHDRAW ANY MOTION FILED IN THE COURT SEEKING TO APPROVE THE SALE.

20. The Bankruptcy Court shall retain exclusive jurisdiction over any matter or dispute relating to the Sale of the Assets, the Bidding Procedures, the Auction, the Winning Bid, the Backup Bid, and/or any other matter than in any way relates to the foregoing.

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EXHIBIT B

NOTICE OF BIDDING PROCEDURES

TO BE CONFORMED TO MOTION

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

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BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
NICHOLAS A. KOFFROTH, ESQ.
Nevada Bar No. 16264
ZACHARY T. WILLIAMS, ESQ.
Nevada Bar No. 16023
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Telephone: (702) 262-6899
Facsimile: (702) 597-5503
Email: baxelrod@foxrothschild.com
nkoffroth@foxrothschild.com
zwilliams@foxrothschild.com
Counsel for Debtor

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

CASH CLOUD, INC.,
D/B/A COIN CLOUD

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**NOTICE OF BIDDING PROCEDURES IN
CONNECTION WITH SALE OF
SUBSTANTIALLY ALL ASSETS OF THE
DEBTOR TO BE CONFORMED TO
MOTION**

Hearing Date: _____, 2023

Hearing Time: ____:00 a.m. (Pacific Time)

PLEASE TAKE NOTICE THAT on _____, 2023, Cash Cloud, Inc., d/b/a Coin Cloud
(the “Debtor”), debtor and debtor in possession in the above-captioned chapter 11 case (the “Chapter”

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FR DRAFT 3/28/23

11 Case”), under chapter 11 of the United States Bankruptcy Code 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), filed *Debtor’s Motion For Entry of: (I) an Order (A) Approving Auction and Sae Format and Bidding Procedures, (B) Approving Form Notice to be Provided to Interested Parties; (C) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest or Otherwise Best Bidder; and (II) An Order Authorizing the Sale of the Assets Free and Clear of all Claims, Liens, and Encumbrances* [Docket No. ____] (the “Motion”)³ with the United States Bankruptcy Court for the District of Nevada (the “Court”) pursuant to §§ 105(a), 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”),⁴ Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004 of the Local Rules of Bankruptcy Practice of the United States Bankruptcy Court, District of Nevada (the “Local Rules” or “LR”), for entry of an order (the “Bidding Procedures Order”), (i) approving and authorizing the bidding procedures, substantially in the form annexed to the Motion as Exhibit A (the “Bidding Procedures”), in connection with the sale (the “Sale”) of substantially all of the Debtor’s Assets (as defined in the Motion); (ii) approving and authorizing an auction process (the “Auction”) to sell the Assets in accordance with the Bidding Procedures; (iii) approving the form and manner of notice of the bidding procedures (the “Bidding Procedures Notice”), substantially in the form annexed to the Motion as Exhibit B; (iv) scheduling a hearing to approve a sale to the successful bidder, and, if applicable, alternate bidder resulting from the Auction; and (v) granting the Debtor such other and further relief as is just and appropriate under the circumstances.

PLEASE TAKE FURTHER NOTICE THAT on _____, 2023, the Court entered an *Order Establishing Bidding Procedures and Deadlines Relating to Sale Process for Substantially All of Debtor’s Assets* [Docket No. ____] (the “Bidding Procedures Order”), approving the form of this Bidding Procedures Notice and the Bidding Procedures, and authorizing Debtor to employ the Bidding Procedures.

³ All capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the Motion or in the Bidding Procedures, as applicable.

⁴ Unless otherwise noted herein, all references to “§” or “Section” are to sections of the Bankruptcy Code.

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FR DRAFT 3/28/23

1 **PLEASE TAKE FURTHER NOTICE THAT** pursuant to the Bidding Procedures Order,
2 CKDL Credit, LLC (“CKDL”) shall be the Stalking Horse Bidder and CKDL’s bid (the “Stalking
3 Horse Bid”) shall be a Qualified Bid. If Debtor receives a Qualified Bid or Qualified Bids in addition
4 the Stalking Horse Bid by the Bid Deadline, Debtor shall conduct the Auction on July [21], 2023
5 commencing at 9:00 a.m. (Pacific Time) at the offices of Fox Rothschild, 1980 Festival Plaza Drive,
6 Suite 700, Las Vegas, Nevada 89135, or at such later date and time and at such alternative location
7 (including by remote videoconference or telephonic means noticed to the Qualified Bidders as
8 determined by the Debtor in its discretion) as the Debtor may determine or the Bankruptcy Court may
9 direct. If the Debtor does not receive at least one Qualified Bid (in addition to the Stalking Horse
10 Bid) by the Bid Deadline, the Debtor may not conduct the Auction.

11 **PLEASE TAKE FURTHER NOTICE THAT** the “Cure Objection Deadline” is [DATE],
12 2023, by 5:00 p.m. (prevailing Pacific Time). All Counterparties shall receive service of the Cure
13 Notice and must object to Cure Amount stated therein, or the ability of the Stalking Horse Bidder to
14 provide adequate assurance of future performance, on or before the Cure Objection Deadline.

15 **PLEASE TAKE FURTHER NOTICE THAT** the “Cure Reply Deadline” is [DATE], 2023,
16 by 5:00 p.m. (prevailing Pacific Time). The Debtor, or any other party, shall reply to any Cure
17 Objections filed on or before the Cure Objection Deadline.

18 **PLEASE TAKE FURTHER NOTICE THAT** the “Cure Hearing” is [DATE], 2023 at 9:30
19 a.m., at the United States Bankruptcy Court, Courtroom 2, 300 Las Vegas Boulevard South, Las
20 Vegas, Nevada, which may be continued, upon Debtor’s request, to a later date. The Court shall
21 resolve any and all disputes as to Cure Amounts, if not previously resolved by the relevant parties.

22 **PLEASE TAKE FURTHER NOTICE THAT** the “Bid Deadline” is July [14], 2023, by
23 5:00 p.m. (prevailing Pacific Time). A Potential Bidder that desires to make a bid for the Assets, or
24 any portion thereof, is required under the Bidding Procedures and the Bidding Procedures Order to
25 deliver its Qualified Bid and all materials required in connection therewith (as fully set forth in the
26 Bid Procedures) no later than the Bid Deadline. Any person or entity that does not submit a bid by
27 the Bid Deadline (as may be extended pursuant to the Bidding Procedures) shall not be permitted to
28 participate in the Auction.

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PLEASE TAKE FURTHER NOTICE THAT all objections to the Sale, including any and all objections from the Counterparties as to the adequate assurance of future performance of the Winning Bidder (other than the Stalking Horse Bidder), must be submitted on or before [DATE], 2023, by 5:00 p.m. (prevailing Pacific Time).

PLEASE TAKE FURTHER NOTICE THAT the Court shall conduct a hearing ("Sale Hearing") to determine whether or not to approve any sale to any Winning Bidder and, if applicable, any Back-Up Bidder on July [27], 2023, at 9:30 a.m., at the United States Bankruptcy Court, Courtroom 2, 300 Las Vegas Boulevard South, Las Vegas, Nevada, which may be continued, upon Debtor's request, to a later date.

PLEASE TAKE FURTHER NOTICE THAT any person or entity wishing to submit a bid for the Assets is urged to review the Bidding Procedures, the Bidding Procedures Order, and the Motion. Copies of the Motion and the Bidding Procedures Order, including the Bidding Procedures annexed as Exhibit A to the Bidding Procedures, may be reviewed (a) during regular Court hours at the United States Bankruptcy Court, 300 Las Vegas Boulevard South, Las Vegas, Nevada, (b) electronically at www.nvb.uscourts.gov, the official website for the Court, (c) at the website for the Debtor's claims agent Stretto, Inc. at <https://cases.stretto.com/CashCloud>, or (d) upon written request to counsel for Debtor, Fox Rothschild LLP, 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135, Attention: Brett Axelrod, baxelrod@foxrothschild.com.

DATED this ____ day of _____ 2023.

FOX ROTHSCHILD LLP

By: /s/Brett A. Axelrod
BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Counsel for Debtor

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EXHIBIT C
CURE NOTICE

TO BE CONFORMED TO MOTION

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

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FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899
(702) 597-5503 (fax)

Exhibit 3

Guido, Laura

From: Williams, Zachary <ZWilliams@foxrothschild.com>
Sent: Thursday, July 20, 2023 11:21 AM
To: Kissner, Andrew; mdweinberg@cgsh.com; Mertz, Justin M (14972); Lee, Gary S.; rworks@mcdonaldcarano.com; Kinas, Rob; Severance, Alexander Gerard; Tucker, Michael; LoTempio, Catherine; gayda@sewkis.com; Matott, Andrew; Higgins, Mason A (21705)
Cc: Axelrod, Brett; Daniel Moses; Tanner James; McPherson, Jeanette E.; Noll, Audrey; Chlum, Patricia M.
Subject: FW: Coin Cloud / Heller Capital APA - Purchase Price Reduction
Attachments: Copy of Coin Cloud Physical Count and PP Adj_V3-C.xlsx

Categories: DM, #139094061 : 28374 : 0000001 : AXK38

External Email

All,

Please see the email below from Heller's counsel. Pursuant to the terms of the APA, Heller will be requiring a 10% purchase price reduction based on the actual number of machines in existence and their operating status.

Feel free to reach out with any questions.

Thanks,

Zach Williams

Associate | Business Solutions, Financial Restructuring & Bankruptcy

Fox Rothschild LLP

One Summerlin

1980 Festival Plaza Drive, Suite 700

Las Vegas, NV 89135

(702) 427-2975 - Cell

(702) 699-5917 - Office

(702) 597-5503 - fax

ZWilliams@foxrothschild.com

www.foxrothschild.com

From: Erin Farabaugh <efarabaugh@hellercg.com>

Sent: July 19, 2023 2:45 PM

To: Williams, Zachary <ZWilliams@foxrothschild.com>; Smith, Tyler M. <tmsmith@foxrothschild.com>

Cc: Axelrod, Brett <BAxelrod@foxrothschild.com>; Petrone, Joseph N. <JPetrone@foxrothschild.com>; Davidson, Clayton <CDavidson@mcneeslaw.com>; Austin Haller <ahaller@powercoinco.com>; Neal Leininger <nleininger@hellercg.com>

Subject: [EXT] RE: Coin Cloud / Heller Capital APA - Purchase Price Reduction

Zach and Tyler,

Purchaser has completed enough of its diligence process, to confirm that the Purchase Price Adjustment set forth in Section 1.8 of the Asset Purchase Agreement is applicable to this transaction. By way of further detail, based on Purchaser's diligence in the Morning Star Storage location, you will see from review of the attached that of the 428 DCMs identified on Schedule 2.1(a) for that location, only 235 machines were physically in the warehouse that matched the description on Schedule 2.1(a). Our diligence team did find another 125 DCMs (not reflected on Schedule 2.1(a)) in that warehouse location; *however*, out of the total number of machines in the warehouse (360), 243 are not in Working Condition (as defined in the APA).

We have attached a spreadsheet for this location which identifies the following for this warehouse location:

1. For each DCM listed on Schedule 2.1(a):
 - a. notation on whether or not it is held at the warehouse;
 - b. notation on whether or not it is in Working Condition; and,
 - c. if not in Working Condition, our notes related to the same.
2. For each DCM found in the warehouse (but not listed on Schedule 2.1(a)):
 - a. notation on whether or not it is in Working Condition; and,
 - b. if not in Working Condition, our notes related to the same.

*Please note as reflected on the attached, we limited our description of the DCM to state "No PC" as that component part alone would exceed the \$500 threshold for determining Working Condition. It is notable, however, that a number of DCMs have additional damage, or missing component parts.

Given that the number of DCMs in the warehouse varies by more than 5% of those identified on Schedule 2.1(a), the 10% reduction of Purchase Price is applicable. Further, even if we were to include the additional DCMs found in this one warehouse location, over 10% of DCMs are not in Working Condition.

While the APA does not require the same, I think it would be prudent to include confirmation of the Purchase Price Adjustment in the Closing Acknowledgment. Given that Tyler provided me with a word copy of the same, I will revise and recirculate to include that adjustment.

Please let me know if you have any questions.

Thank you,
Erin



ERIN C. FARABAUGH
CHIEF LEGAL OFFICER

HELLER CAPITAL
E: EFARABAUGH@HELLERCG.COM
M: 724.272.7907

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Exhibit 4

In re: Cash Cloud Inc.

ROUGH DRAFT TRANSCRIPT OF

Tanner James

August 22, 2023

THIS REAL-TIME DRAFT IS UNEDITED AND UNCERTIFIED AND MAY
CONTAIN UNTRANSLATED STENO, AN OCCASIONAL REPORTER'S NOTE,
A MISSPELLED PROPER NAME AND/OR NONSENSICAL ENGLISH WORD COMBINATIONS.

THIS DRAFT IS INTENDED ONLY FOR THE PURPOSE OF AUGMENTING COUNSEL'S
NOTES AND IS NOT INTENDED TO BE USED OR CITED IN ANY COURT PROCEEDING.

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DRAFT
TRANSCRIPT

IN RE: CASH CLOUD, INC. DBA COIN CLOUD

TANNER JAMES

Tuesday, August 22, 2023

By: Karen L. Jones, NV CCR 694

1 *****ROUGH DRAFT TRANSCRIPT*****

2 *****ROUGH ONLY*****

3

4 BY MR. KISSNER:

5 Q. Good morning. My name is Andrew. I'm
6 with Morrison & Foerster and I represent Enigma
7 Securities Limited in this action. I'm going to ask
8 you a couple questions today about Cash Cloud, Inc.,
9 which I'm going to refer to as Coin Cloud or the
10 debtor. I assume you'll understand when I say that.

11 Could you please state your name for the
12 record.

13 A. My name is Tanner James.

14 Q. And have we ever met before?

15 A. Not in person.

16 Q. But we've spoken over Zoom
17 videoconference before?

18 A. Correct.

19 Q. Have you ever been deposed?

20 A. I have not.

21 Q. You have not. And how are you feeling
22 today?

23 A. Good.

24 Q. Good?

25 A. Yeah.

1 Q. Sleep well?

2 A. Yeah. No, great actually.

3 Q. Is there any reason that you can think
4 of that you would not be able to give full and
5 complete testimony today?

6 A. Not today.

7 Q. Okay. And sorry if this is personal,
8 but are you on any drugs or medication or anything
9 like that --

10 A. No, I am not.

11 Q. -- that would impair your ability?

12 And so actually leads me to my next part
13 because you'll see that we have our court reporter
14 here today and she's going to be transcribing what
15 we say. So I know in the course of usual everyday
16 conversation we can sort of anticipate what people
17 are saying and sometimes we'll give the answer.
18 Although it's a little awkward, if you can do me a
19 favor, even if you know what I'm going to ask, if
20 you can wait for me to finish asking the question.
21 That way our reporter can get a clear and accurate
22 record. Okay?

23 And then same thing again, I know
24 there's a lot of uh-huhs or nods, but those are not
25 going to show up on the record. So if possible,

1 please try and give verbal responses, again so that
2 the court reporter can get a clean and accurate
3 record. All right?

4 A. Understood.

5 Q. Sounds good.

6 And then just a couple more of these
7 preliminaries but -- if you don't understand a
8 question that I ask, then please let me know so that
9 I can rephrase it. Conversely, if you do answer a
10 question I'm going to assume that you understood it.
11 Is that okay?

12 A. Understood.

13 Q. And then you might hear objections from
14 your counsel, and that's fine, but unless you are
15 instructed not to answer, you should still answer my
16 question even if there's an objection. All right?

17 A. Understood.

18 Q. And then we're going to take periodic
19 breaks throughout the deposition, but let me know if
20 at any point you need a break, whether just to
21 collect yourself, go to the restroom, whatever.
22 You're free to do that at any time. The only thing
23 that I ask is that if there's a question pending,
24 you answer the question before we take a break. All
25 right?

1 A. Understood.

2 Q. Okay. So with all that out of the way
3 let's begin.

4 So who is your current employer?

5 A. Province.

6 Q. And who is your position with Province?

7 A. I'm a vice president.

8 Q. Okay. And can you describe some of your
9 roles and responsibilities as vice president at
10 Province?

11 A. Yeah. Generally, I am responsible for
12 preparing analytics at the instruction of counsel or
13 principals of the firm.

14 Q. And do you work in one particular
15 practice area or do you do various practice areas?

16 A. Generally corporate restructuring, but I
17 have worked in various areas.

18 Q. Okay. What are some of those other
19 areas you've worked in?

20 A. Litigation support and general M&A.

21 Q. When you say litigation support, can you
22 describe what that means?

23 A. Yeah. For clients, who are sometimes
24 private, involved in a litigation where they need
25 some type of analytics done around a case.

1 Q. Have you ever been called to testify in
2 connection with any of those engagements?

3 A. No.

4 Q. Have you ever been called to testify in
5 court for any of your engagements?

6 A. This one.

7 Q. This one. Okay.

8 And you've testified previously in this
9 case?

10 A. So to clarify, I believe I did
11 interrogatories.

12 Q. Okay. That's right.

13 A. Yes.

14 Q. And those were the interrogatories that
15 Enigma sent to Province; is that correct?

16 A. Correct.

17 Q. But you've never done live testimony in
18 a court for this case or any other case?

19 A. No, I have not.

20 Q. Can you tell me how long you've been a
21 vice president of Province?

22 A. I believe two months now, a little over
23 two months.

24 Q. Congratulations.

25 A. Thank you.

1 Q. And what was your role before vice
2 president at Province?

3 A. Senior associate.

4 Q. Also at Province?

5 A. Correct.

6 Q. And how long were you in that position?

7 A. About a year.

8 Q. Okay. And did your roles and
9 responsibilities differ as a senior associate versus
10 your roles and responsibilities now as vice
11 president?

12 A. Not so far.

13 Q. And prior to being a senior associate at
14 Province, what was your previous position?

15 A. Associate.

16 Q. Also at Province?

17 A. Yes.

18 Q. And how long were you there or in that
19 position?

20 A. About two years.

21 Q. Okay. And prior to that, did you work
22 also at Province or were you at another firm?

23 A. I was in my master's program.

24 Q. And what was your master's degree in?

25 A. Financial management and accounting.

1 Q. And at what school?

2 A. North Central College.

3 Q. Is that in Nevada or?

4 A. It's in Illinois.

5 Q. Illinois. Okay. Gotcha.

6 So I'm going to ask -- you see your

7 binder in front of you. I'm going to ask you to

8 open that and go to Tab 1, which I'm going to ask

9 the court reporter to mark as Enigma's Exhibit 1.

10 (Exhibit 1 marked.)

11 BY MR. KISSNER:

12 Q. You're there. Are you familiar with

13 this document?

14 A. Yes.

15 Q. Can you describe it?

16 A. This is Enigma Securities Limited notice

17 of deposition for Cash Cloud and then it has topics

18 for examination.

19 Q. Okay. Great.

20 And do you understand that you're

21 appearing today pursuant to this notice of

22 deposition?

23 A. Yes.

24 Q. Okay. And -- okay, great, you're

25 already on page 2. So you understand that you're

1 here to testify as a representative of the debtor on
2 the topics that are listed on -- certain strike
3 that.

4 You understand that you're here to
5 testify as a representative of the debtor on certain
6 topics listed in this notice?

7 A. Yes.

8 Q. Okay. And you're here -- sorry. Strike
9 that.

10 Do you see topics -- and this is
11 beginning at the bottom of page 2 of the notice of
12 deposition. Do you see topic nine?

13 A. Yes.

14 Q. Can you read it?

15 A. Any analysis evaluation assessment of
16 the scope of the collateral.

17 Q. And you're prepared to testify on this
18 topic today?

19 A. To the extent it's relevant to this
20 analysis, yes.

21 Q. Okay. To the extent that it's not
22 relevant to this analysis are you also prepared to
23 testify?

24 A. I will do my best to, yes.

25 Q. And then going to the next page at the

1 top of the page topic ten, it's very long. But if I
2 were to characterize this as testimony regarding a
3 surcharge analysis regarding a declaration that you
4 filed in regard to a sale proceeds analysis would
5 you say that's a fair summary of topic ten?

6 A. Yes.

7 Q. Are you prepared to testify regarding
8 the surcharge analysis, your declaration and the
9 sale proceeds analysis today?

10 A. Yes.

11 Q. And then going to topic 11, can you read
12 that?

13 A. Any analysis, evaluation or assessment
14 of the scope of the lenders' collateral or property
15 interests, including but not limited to those
16 conducted or preparing the surcharge analysis, the
17 James declaration or the sale proceeds analysis.

18 Q. Okay. Great.

19 And are you prepared to testify on those
20 topics today?

21 A. Yes.

22 Q. And then going to topic 12. Can you
23 read that. Sorry.

24 A. Any analysis, evaluation or assessment
25 of the necessity or reasonableness of the costs

1 proposed to be surcharged as set forth in the
2 surcharge analysis or the James declaration.

3 Q. And are you prepared to testify on those
4 topics today?

5 A. Yes.

6 Q. Can you read topic 13, please?

7 A. Any analysis, evaluation or assessment
8 of the benefit obtained by Enigma as a result of the
9 costs proposed to be surcharged as set forth in the
10 surcharge analysis or the James declaration.

11 Q. Great.

12 Are you prepared to testify on this
13 topic today?

14 A. Yes.

15 Q. And finally topic number 14, could you
16 please read that?

17 A. The nature and amount of any costs
18 proposed to be surcharged as set forth in the
19 surcharge analysis or the James declaration.

20 Q. And are you prepared to testify on that
21 topic today?

22 A. Yes.

23 Q. Okay. I just have a few more
24 preliminary questions and then we can get into it.

25 So did you do anything to prepare for

1 today's testimony as a representative of the debtor
2 on topics nine through 14?

3 A. Yes.

4 Q. Could you tell me how you prepared?

5 A. Yes. I reviewed the production
6 materials. I reviewed the James declaration. I
7 reviewed the surcharge analysis. I reviewed the
8 preliminary sale analysis. I reviewed the support
9 to the surcharge analysis. I reviewed the surcharge
10 application. I reviewed the Province application
11 for employment. I believe that's it.

12 Q. Okay. And when you said you reviewed
13 the production materials, does that refer to
14 materials produced in discovery to Enigma in
15 connection with this matter?

16 A. Yes.

17 Q. Okay. Did any of those documents help
18 refresh your recollection on anything you might have
19 forgotten?

20 A. Yes.

21 Q. Okay. Did you have any discussions with
22 anyone at Coin Cloud in preparing for this
23 testimony?

24 A. Not of the remaining employees.

25 Q. Did you have any discussions with any

1 former employees from Coin Cloud in preparation for
2 today?

3 A. No.

4 Q. Okay. Did you have any discussions with
5 anybody at Province in preparing for your testimony
6 today?

7 A. Yes.

8 Q. Who did you talk to at Province?

9 A. Daniel Moses and Paul Huygens.

10 Q. And did you have any discussions with
11 anybody representing or related to the creditors'
12 committee in preparing for today's testimony?

13 A. I don't believe so, in preparation for
14 it.

15 Q. Okay. And when I say creditors'
16 committee, you understand that I refer to the
17 Official Committee of Unsecured Creditors appointed
18 in the debtor's bankruptcy, correct?

19 A. (Nods head in the affirmative.)

20 Q. Okay. Did you have discussions with
21 anybody else that I didn't mention in preparation
22 for today's testimony?

23 A. Counsel for the debtor. And I'd also
24 like to add that I did talk to David Dachelet as
25 well, general counsel of Province.

1 Q. And about how long in total do you think
2 you spent preparing for today?

3 A. Most of yesterday and several hours over
4 the weekend.

5 Q. Okay. So about how many hours in total
6 do you think you spent preparing?

7 A. Probably 24 to 34 hours.

8 Q. Okay. So I'm going to turn to Tab 3 in
9 your binder which I'm going to ask the reporter to
10 mark as Exhibit 2.

11 (Exhibit 2 marked.)

12 BY MR. KISSNER:

13 Q. And are you there?

14 A. So --

15 Q. Tab 3.

16 A. I'm there.

17 Q. Okay. Do you recognize this document?

18 A. Yes.

19 Q. What is it?

20 A. The Declaration of Tanner James in
21 Support of Motion for Entry of an Order Authorizing
22 Debtor to Surcharge the Collateral of Genesis Global
23 Holdco, LLC, Enigma Securities Limited and AVT
24 Nevada, LP.

25 Q. And if I refer to this as the "surcharge

1 declaration," will you know that I'm referring to
2 this?

3 A. Yes.

4 Q. And if it's ever not clear from context,
5 you'll just let me know?

6 A. Yes.

7 Q. Did you create the surcharge
8 declaration?

9 A. I helped develop it with counsel.

10 Q. Okay. Did you draft it?

11 A. I drafted -- I drafted the contents of
12 it with the help of counsel.

13 Q. Okay. Did anybody other than counsel
14 assist you in drafting this?

15 A. To clarify, are you talking about the
16 text of the declaration or the exhibit or the
17 entire --

18 Q. Well, let's start with the text of the
19 declaration. Did anybody other than counsel assist
20 you in drafting the declaration?

21 A. I believe it may have been reviewed by a
22 principal of Province, but it was drafted between
23 myself and counsel.

24 Q. And who at Province would have reviewed
25 the text of the surcharge declaration?

1 A. Paul Huygens or Dan Moses.

2 Q. And can you turn to Exhibit A, which is
3 page 7 of 11. Sorry. This one's not Bates stamped.
4 And can you review this exhibit?

5 A. Yes.

6 Okay. Yes.

7 Q. Do you recognize Exhibit A to the
8 surcharge declaration?

9 A. Yes.

10 Q. What is it?

11 A. It is a preliminary sale analysis of the
12 costs to the estate for the collateral sold.

13 Q. Did you create Exhibit A to the
14 surcharge declaration?

15 A. Yes.

16 Q. And did anybody else draft or edit
17 Exhibit A to the surcharge declaration?

18 A. To clarify, when you say edit, do you
19 mean physically or with comments?

20 Q. I would mean either. Did anybody
21 physically edit or provide comments to you on
22 Exhibit A to the surcharge declaration?

23 A. I don't believe anybody else physically
24 edited this document, specifically this exhibit, but
25 I did receive comments from a variety of

1 professionals of the estate at various points of the
2 development of this analysis.

3 Q. Okay. Can you tell me which
4 professionals of the estate you recall providing
5 comments on Exhibit A to the surcharge declaration?

6 A. Sure. I received comments from Fox
7 Rothschild. I received comments from the principals
8 of Province. And a previous iteration of this, not
9 this exact one, the committee, Seward & Kissel and
10 FTI.

11 Q. Did you receive comments from anybody
12 else?

13 A. Not that I recall.

14 Q. Do you recall the nature of the comments
15 that you received from the committee's
16 professionals?

17 A. Yes. At least some of them.

18 Q. Can you describe those that you recall?

19 A. Sure. Comments around the scope of the
20 warehouse costs and comments around the professional
21 fees to be included. I believe that's it.

22 Q. Okay. Do you recall what the
23 committee's comments on the scope of warehouse costs
24 were?

25 A. I recall comments about the period of

1 time to be counted related to the warehouse costs
2 and reconciliation of invoices to the amounts
3 surcharged.

4 Q. Okay. And do you recall what the nature
5 of the comments you received from the committee were
6 regarding professional fees to be included in
7 Exhibit A to your surcharge declaration?

8 A. Sure. I remember general feedback on
9 the inclusion of them generally speaking and
10 feedback on the amounts related to their particular
11 firms.

12 Q. And do you recall what that feedback
13 was?

14 A. Sure. Whether or not they were to be
15 included and the amounts.

16 Q. And were they asking the amounts to be
17 increased, decreased or otherwise changed?

18 A. I don't believe the amounts were ever
19 changed, to my memory. I do remember amounts being
20 given to me.

21 Q. Okay. So would it be fair to say that
22 the committee provided you comments regarding the
23 professional fees to be included in this analysis,
24 but that you did not modify this analysis to reflect
25 those comments?

1 A. No. I would have had to have had the
2 amounts provided to include them.

3 Q. Okay. I think I understand.

4 So to confirm, you provided a draft copy
5 strike that. Let me rephrase.

6 Would it be fair to say, then, that you
7 provided a draft copy of this analysis to the
8 committee's advisor, who then provided you with
9 information regarding professional fees to be
10 included in this analysis?

11 A. To clarify, this exhibit is a modified
12 version of a previous analysis that I believe Enigma
13 saw and Genesis, and I would have received those
14 amounts during the development of the prior version,
15 not had them included for this particular exhibit.

16 Q. Okay. So then why don't we take a look
17 at Tab 12 in your binder, which I'm going to mark
18 as -- or I'm going to ask the reporter to mark as
19 Exhibit 3.

20 (Exhibit 3 marked.)

21 BY MR. KISSNER:

22 Q. Do you recognize this document?

23 A. Yes, I do.

24 Q. What is it?

25 A. This is a preliminary sale analysis of

1 the sale proceeds with adjustments to the gross
2 proceeds as it relates to the parties who have liens
3 on the collateral.

4 Q. And if I refer to this document as the
5 preliminary surcharge analysis, will you know what
6 I'm referring to?

7 A. Yes.

8 Q. Did you create this preliminary
9 surcharge analysis?

10 A. When you say "create," you mean
11 physically, right, not with feedback?

12 Q. I just mean did you prepare this
13 preliminary surcharge analysis?

14 A. Yes, I physically created this analysis.

15 Q. Did anybody else assist you in preparing
16 it?

17 A. Yes. I received feedback from a variety
18 of estate professionals.

19 Q. And could you tell me which estate
20 professionals provided you feedback on this
21 preliminary surcharge analysis?

22 A. Sure. Fox Rothschild, members of
23 Province, committee professionals from both Seward &
24 Kissel and FTI.

25 Q. And now is this the -- strike that.

1 You testified earlier that Enigma's
2 Exhibit 2, which is your declaration, you had
3 testified earlier that Exhibit A to your surcharge
4 declaration, there had been a prior iteration of
5 that document; is that correct?

6 A. Correct.

7 Q. Is this preliminary surcharge analysis,
8 Enigma's Exhibit 3, is that the prior iteration of
9 your of the exhibit attached to your surcharge
10 declaration?

11 A. I believe this is one of the previous
12 iterations, yes.

13 Q. Okay. Now, is everything in Exhibit 3
14 true, to the best of your knowledge? Tab 13 is
15 still Exhibit 3 -- or Tab 12. I apologize. The
16 document you're currently looking at Enigma's
17 Exhibit 3, I apologize.

18 A. Sorry. When you say true to the best of
19 my knowledge, you mean was this filed or -- this is
20 certainly a draft.

21 Q. Okay. But at the time that you prepared
22 this, was everything in it accurate to the best of
23 your knowledge?

24 A. Yeah, I believe that this would have
25 been the most current information that I had. Yeah,

1 at the time this was prepared, certainly.

2 Q. And at the present time is everything in
3 here still accurate, to the best of your knowledge?

4 A. No.

5 Q. Could you please describe what in here
6 is no longer accurate, to the best of your
7 knowledge?

8 A. Sure. I don't know all of the changes
9 that have been made to this, comparing the two, but
10 at least professionals fees are higher in the filed
11 version.

12 Q. And why are the professionals fees
13 higher in the filed version?

14 A. Because there weren't fees accrued
15 available to me at the time that I made this.

16 Q. Were there any other changes that you
17 made between this Exhibit 3 and what was marked
18 previously as Exhibit 2, which was the final
19 surcharge analysis attached to your declaration?

20 A. Sure. I don't remember all of them, but
21 I know that the adequate protection payments were
22 removed. And I also know there was an adjustment to
23 the purchase price and a corresponding reduction in
24 Province's sale fee, and there may have been changes
25 to the number of machines and therefore also

1 allocation of costs. Without spending time
2 comparing every aspect of the analysis, those are --
3 those are the ones that I know of right now.

4 Q. Okay. And if we could turn back, then
5 to Tab 3, which was marked earlier as Exhibit 2.
6 And then if you'll go back to Exhibit A of this
7 document which begins on page 7.

8 So we were just talking about this
9 document, correct? This is the final version of
10 your preliminary surcharge analysis; is that
11 correct?

12 A. Yes.

13 Q. And so is it correct to say that this
14 analysis does not include a reduction for adequate
15 protection payments made to secured lenders?

16 A. Yes.

17 Q. And why were those adequate protection
18 payments removed from this analysis?

19 A. My understanding, and certainly a better
20 question for counsel, is that the recharacterization
21 of adequate protection is a separate issue.

22 Q. And so now -- because before. Strike
23 that please.

24 You'll recall earlier I was asking you
25 some questions about your declaration and you had

1 drawn a distinction between the text of the
2 declaration and the exhibits attached thereto. Do
3 you recall that?

4 A. Yes.

5 Q. Okay. So now, having walked through the
6 text of the declaration and Exhibit A, can you tell
7 me if everything in this document -- and by this
8 document I mean the text of your declaration and
9 Exhibit A -- if this is true and accurate to the
10 best of your knowledge?

11 A. It certainly was at the time of filing.
12 If any reservations, it would be about the count of
13 the machines, but I don't believe that changes the
14 amount of the surcharge.

15 Q. If you could tell me what has changed
16 about the count of the machines since the time this
17 declaration was filed and today?

18 A. Sure. I certainly don't remember the
19 amounts or number of machines that changed or has
20 changed or may have changed, but I know that there
21 is ongoing reconciliation of the records and, as
22 mistakes in the records are found and corrected, the
23 numbers can change.

24 Q. Can you tell me a little bit more about
25 that reconciliation process?

1 A. Sure. Any particular aspect of the
2 reconciliation process?

3 Q. Just generally?

4 MR. MANN: Objection. Calls for a
5 narrative.

6 BY MR. KISSNER:

7 Q. You can answer.

8 A. Yeah. When we received the records,
9 they were not in a state that was practical to use
10 for several of the analytics that have been used
11 throughout, and both the debtor and its
12 professionals have done their best to clean those
13 records so that they can be used and are as close to
14 accurate as we can possibly get them.

15 Q. And when you say the records, to what
16 are you referring?

17 A. The debtor's records of its kiosk
18 inventory.

19 Q. And when did you first receive the
20 debtor's records with respect to its kiosk
21 inventory?

22 A. I don't remember the exact date.

23 Q. Do you have a sense of month? Year?

24 A. Sure. Certainly the first quarter of
25 the year.

1 Q. When you say the first quarter of the
2 year, you're talking -- you mean the first quarter
3 of 2023?

4 A. Correct.

5 Q. So that would have been six to eight
6 months ago; is that fair?

7 A. That sounds right.

8 Q. And when did you begin the process of
9 reconciling the debtor's inventory?

10 A. I don't remember when we decided it
11 needed a full-fledged work stream, but I do know
12 that we began trying to compare the different
13 records that we had in our possession fairly early
14 on.

15 Q. And when you say different records that
16 you had in your possession, does that mean there was
17 another set of records other than the debtor's
18 inventory?

19 A. The debtor has a variety of departments,
20 each with their own sets of records, that aren't
21 always consistent with each other.

22 Q. Do you recall any particular times where
23 there was a conflict between two or more different
24 records from the debtor?

25 A. Sure.

1 Q. Can you describe them?

2 A. To my memory, the debtor's CCOS, its
3 software program records, did not always tie to the
4 inventory records that we were told were the best
5 record to go off of, and at certain points we found
6 discrepancies between the debtor's lease records and
7 its inventory records, and certainly discrepancies
8 between collateral records at times and the debtor's
9 inventory records.

10 Q. Now you just said that at some point you
11 were told that the debtor's inventory record was the
12 best record to go off; is that correct?

13 A. Yes.

14 Q. Who told you that?

15 A. It would have been Chris McAlary or one
16 of the debtor's employees, Wintana, who I don't
17 remember their last name.

18 Q. And who's Chris McAlary?

19 A. The former CEO of Coin Cloud.

20 Q. And who is Wintana?

21 A. I don't know her title, but generally
22 she was responsible for the machines and keeping the
23 records of them and maintaining them.

24 Q. And so this best version of the
25 inventory, is that what was used in preparing

1 Exhibit 2, your surcharge analysis?

2 A. Certainly not the original version of
3 that record. As we pointed out mistakes or
4 inconsistencies in the record that are -- attempted
5 to update that record several times. So a revised
6 form of that original record was certainly the basis
7 of this analysis, but ultimately not the same as the
8 original.

9 Q. Okay. So other than updating -- sorry.
10 Please strike that.

11 You said before that if anything were
12 not true and accurate in this surcharge analysis
13 today it would be the count of the machines set
14 forth therein; is that correct?

15 A. That sounds right.

16 Q. Is there anything else in your surcharge
17 analysis that you would like to change or that you
18 do not think is true and accurate today?

19 A. I believe there are parts of this
20 analysis that may be contingent on the future at the
21 time it was prepared, but otherwise, to my knowledge
22 right now, I'm not aware of anything else that would
23 need to be revised. Maybe the run rate of the
24 Trangistics claim. But again, it's part of an
25 ongoing dispute with them.

1 Q. And when you say "contingent on the
2 future," what does that mean?

3 A. Some of these amounts include estimates
4 of future months. And I also believe the notes of
5 the analysis point out other parts of this analysis
6 that are contingent on either new information or
7 resolution of disputes.

8 Q. Okay. We're going to shift gears for a
9 little bit.

10 Do you know who Enigma Securities
11 Limited is, my client?

12 A. Yes.

13 Q. Can you tell me who they are?

14 A. It is, to my understand, a secured
15 creditor of Coin Cloud.

16 Q. If we could turn to Tab 4 in your
17 binder, which I'll ask to be marked as Exhibit 4.
18 That's easy.

19 (Exhibit 4 marked.)

20 BY MR. KISSNER:

21 Q. Do you recognize this document?

22 A. I believe I've seen at least a version
23 of this document, if not this document.

24 Q. Can you describe for me what this is?

25 A. It is a secured loan facility agreement.

1 Q. And can you tell me who the parties to
2 this secured loan facility agreement are?

3 A. Cash Coin, Inc. dba Coin Cloud and
4 Enigma Securities Limited.

5 Q. And in your own words could you describe
6 to me what this document says.

7 MR. MANN: Objection. I feel like this
8 is beyond the scope of what he's here today. I feel
9 like this is more pertaining to topic Number 3, the
10 Coin Cloud's knowledge regarding Enigma's security
11 interest over the collateral as defined in that
12 certain security agreement. And so I would state
13 that he's not the 30(b)(6) representative of Coin
14 Cloud for that question.

15 MR. KISSNER: Right, but he is here as
16 the 30(b)(6) representative for topic nine which is
17 evaluation, analysis, assessment of scope of the
18 collateral.

19 MR. MANN: Okay.

20 MR. KISSNER: Could you read the last
21 question back.

22 (The record is read by the reporter.)

23 BY MR. KISSNER:

24 Q. You can strike that. I don't really
25 like that question.

1 Could you, in your own words, describe
2 to me what this document does?

3 A. Yes. This appears to be an agreement
4 between Coin Cloud and Enigma Securities to lend
5 money to Coin Cloud with a security interest in
6 certain cryptocurrency kiosks.

7 Q. And you said before that Enigma could be
8 described as a secured lender to the debtor; is that
9 correct?

10 A. That is my understanding.

11 Q. Okay. So is this Exhibit 4 -- to your
12 understanding, is this the -- is this the loan that
13 you were describing before that makes Enigma a
14 secured lender to the debtor?

15 A. Yes, that's my understanding.

16 Q. And have you reviewed this document at
17 any time previously?

18 A. I may have reviewed this or a version of
19 this in the debtor's file at some point.

20 Q. Did you ever review this in preparing
21 your surcharge analysis?

22 A. No, I did not.

23 Q. Why not?

24 A. Because it wasn't necessary to the
25 preparation of the surcharge analysis.

1 Q. Okay. Can you turn to Tab 5 which I'll
2 ask the reporter to mark as Exhibit 5.

3 (Exhibit 5 marked.)

4 BY MR. KISSNER:

5 Q. Do you recognize this document?

6 A. I believe I've seen a version of this,
7 if not this version.

8 Q. And can you describe in your own words
9 what this document is.

10 MR. MANN: Again, I'm just going to say
11 the same objection, that this is pertaining more to
12 topic number three which he's not here today to
13 answer.

14 MR. KISSNER: Okay, and same response.

15 BY MR. KISSNER:

16 Q. You can answer.

17 A. This appears to be a security agreement
18 between Coin Cloud and Enigma Securities granting
19 Enigma a security interest in certain collateral of
20 Coin Cloud.

21 Q. And does this Exhibit 5 relate to
22 Exhibit 4 the loan agreement?

23 MR. MANN: I'm just going to object this
24 is a legal conclusion, that he's not here to assert
25 the connection to the -- the security agreement to

1 the lease.

2 BY MR. KISSNER:

3 Q. You can answer.

4 A. Yeah. With counsel's comments, I see
5 here that it says security agreement as a defined
6 term dated April 22, and I see here that this is a
7 security agreement dated April 22. So I could see
8 how this would be related to the other document
9 without thorough review though. Yes, this appears
10 to be related.

11 MR. KISSNER: Off the record.

12 (A discussion is held off the record.)

13 MR. KISSNER: Back on the record.

14 BY MR. KISSNER:

15 Q. So Exhibit 5, you said before that you
16 reviewed either this agreement or some version of
17 it; is that correct?

18 A. I've at least seen it and looked through
19 it at a minimum, I would say, a version of it.

20 Q. And did you refer to this agreement or a
21 version of it in preparing your surcharge analysis?

22 A. Can you specify which part of this? Are
23 you referring to Exhibit 5 or 6?

24 Q. I'm referring to Exhibit 5, which is
25 also Tab 5, the security agreement.

1 A. I believe this is the same schedule of
2 collateral as was in the UCC lien filed by Enigma
3 that was used to identify Enigma's collateral in the
4 debtor's inventory records.

5 Q. And when you say "this," are you
6 referring to Schedule 1 to the security agreement
7 that's been marked as Exhibit 5?

8 A. Yes.

9 Q. And did you review Schedule 1 to the
10 security agreement marked as Exhibit 5 in preparing
11 your surcharge analysis?

12 A. Yes, as an indicator of who might
13 encumber certain kiosks, but not as a means to
14 identify the total amount of costs to be surcharged.

15 Q. Okay. In Schedule 1 to Exhibit 5, which
16 is in front of you, would it be fair to say that
17 this is a list of kiosks?

18 A. Yes.

19 Q. And by the way, there's a lot of
20 different nomenclature but if throughout the day you
21 hear me refer to kiosks or DCMs or digital currency
22 machines or machines or ATMs, will you understand
23 that in context I'm referring to digital currency
24 kiosks?

25 A. Yes.

1 Q. Can you tell me how many kiosks are
2 listed on Schedule 1 to Exhibit 5?

3 A. Without counting each row of the
4 schedule, the schedule itself indicates that there
5 are 3,592 based on the first column of the schedule.

6 Q. Can you turn one more page?

7 A. I see.

8 Q. Do you see some additional kiosks listed
9 on this page?

10 A. Yes, I do. And I see a number 3,677.

11 Q. So is it your understanding that this
12 Schedule 1 to Exhibit 5 lists 3,677 kiosks?

13 A. I see 3,677 rows. I cannot say with
14 certainty that each of those kiosks exists or are
15 unique.

16 Q. That's fair.

17 But this Schedule 1 to Exhibit 5 appears
18 to list 3,677 kiosks, correct?

19 A. Yes, I believe that's what this schedule
20 is aiming to do.

21 Q. Okay. Great.

22 Could you turn to Tab 11 in your binder
23 which I'm going to ask be marked as Exhibit 6.

24 (Exhibit 6 marked.)

25 BY MR. KISSNER:

1 Q. Do you recognize this document?

2 A. This document does look familiar to me.

3 I believe I've seen this or a version of it.

4 Q. Can you describe in your own words what
5 it is?

6 A. This is a UCC financing statement for
7 Cash Cloud, Inc. with a secured party of Enigma
8 Securities Limited and a schedule of machines.

9 Q. Do you know what a UCC financing
10 statement is?

11 A. Yes.

12 Q. Could you tell me what it is?

13 A. I believe it is a filed document that
14 aims to identify a security interest in certain
15 property.

16 Q. To your knowledge, does this Exhibit 6
17 relate to the security agreement which was marked as
18 Exhibit 5 and the loan agreement marked as
19 Exhibit 4?

20 A. They appear to have the same schedule of
21 machines.

22 Q. Okay. You said that you've reviewed
23 either this Exhibit 6 or a version of it previously;
24 is that correct? We're still in Tab 11.

25 A. You're talking about this UCC financing

1 statement?

2 Q. Yes. This UCC financing statement
3 marked as Exhibit 6, you said that you've reviewed
4 this or a version of it previously; is that correct?

5 A. Yes.

6 Q. Okay. Did you refer to this UCC
7 financing statement when completing your surcharge
8 analysis?

9 A. I referred to a -- an Excel version of
10 Schedule 1.

11 Q. And when you say "Schedule 1," you're
12 referring to Schedule 1 to Exhibit 6, the UCC
13 financing statement?

14 A. Yes.

15 Q. So before you said that Enigma was a
16 secured lender to the debtor; is that correct?

17 A. That is my understanding.

18 Q. And so that would mean that it was
19 secured by collateral; is that fair to say?

20 A. That is my understanding from
21 conversations with counsel and my colleagues and my
22 review, yes.

23 Q. What collateral do you understand
24 Enigma's loan to have been secured by?

25 A. Certain kiosks.

1 Q. And do you know how many kiosks were
2 pledged to secure Enigma's loan?

3 A. I don't know how many kiosks the debtor
4 pledged at the time other than by looking at this.
5 I know that there was supposed to be 3,677 on paper.
6 I can't verify how many there were other than by
7 reviewing the debtor's records.

8 Q. Okay. Well, why don't we take a look at
9 this Exhibit 6, then. So on the first page, which
10 is Bate-stamped CC_0000026, it's the first page.
11 And then at the bottom, it says, "4. Collateral."
12 Do you see where it says that?

13 A. Yes.

14 Q. Can you please read for me what it says
15 beginning with "4. Collateral"?

16 A. Yes. The 3,677 cryptocurrency ATMs
17 listed on Schedule 1, including the location of each
18 machine, attached hereto and incorporated herein by
19 reference.

20 Q. So based on that, does that change your
21 answer as to how many ATMs were pledged to secure
22 Enigma's loan?

23 A. It would make sense to me if the debtor,
24 prior to my involvement, pledged this many machines
25 to Enigma, but I was not there when the loan was put

1 into place.

2 Q. That's fair.

3 But based off of the information that
4 you have and at least off of the documents that
5 you've reviewed, would it be fair to say that at the
6 time this UCC financing statement, the secured loan
7 agreement and the security agreement were entered
8 into, the debtor pledged 3,677 machines to secure
9 Enigma's loan?

10 A. From these documents, yes.

11 Q. All right. I just have two more
12 documents and then we can take a quick break if that
13 works for everybody. Unless you want to break now?

14 A. We can keep going.

15 MR. KISSNER: Rob, are you good?

16 MR. KINAS: (Indicating).

17 MR. KISSNER: Great.

18 BY MR. KISSNER:

19 Q. I'm going to ask you to turn to Tab 29
20 which actually is in native form.

21 MR. KISSNER: Could you mark Tab 29 as
22 Exhibit 7.

23 (Exhibit 7 marked.)

24 BY MR. KISSNER:

25 Q. Do you have this open, Mr. James?

1 A. Yes.

2 Q. Okay. Do you recognize this document?

3 A. Yes. This appears to be one of the
4 iterations of the kiosks reconciliation spreadsheet.

5 Q. When you say "one of the iterations,"
6 could you be more specific?

7 A. Sure. As it says at the top, it's
8 subject to material change and this version is
9 likely and I believe is different than the original
10 record and changed in the -- in the weeks or months
11 following 4/6/2023, which is the date in the
12 filename, as the debtor continue to correct its
13 records or we received new and better information.

14 Q. Okay. Did you create Exhibit 7, the
15 spreadsheet in front of you?

16 A. I worked on this spreadsheet. I did not
17 create the source data and I did not conduct all of
18 the reconciliation myself and had input from
19 employees of the company.

20 Q. Okay. Let's take that in stages, then.
21 So you said that you did not perform all
22 of the reconciliation of the data underlying
23 Exhibit 7; is that correct?

24 A. Yes.

25 Q. Who else would have performed that

1 reconciliation?

2 A. Colleagues at Province may have helped
3 given the volume of the data and the source data,
4 and employees of the company may have worked to
5 provide updated source data. And I believe that's
6 it.

7 Q. Okay. Now, did anybody other than
8 colleagues at Province help you create this
9 document?

10 MR. MANN: I was going to say objection.
11 Asked and answered.

12 You can keep going.

13 THE WITNESS: Not that I remember
14 outside of the parties that I just described.

15 BY MR. KISSNER:

16 Q. Okay. Is everything in this document
17 true and accurate, to the best of your knowledge?

18 A. This is a draft that changed and I
19 cannot validate that each of these machines
20 physically has these identifiers or are where they
21 are or exists other than relying on the debtor's
22 records.

23 Q. That's fair.

24 But at the time that this was created --
25 strike that.

1 You said before that this was created on
2 or about April 6, 2023?

3 A. (Nods head in the affirmative.)

4 Q. At that time, to the best of your
5 knowledge, was this true and accurate?

6 A. Yes.

7 Q. Okay.

8 A. This was the best version that we had at
9 the time, assuming this is a version that was
10 produced to Enigma and not a different draft.

11 Q. Fair enough.

12 Could you tell me what you -- sorry.
13 Strike that.

14 Am I correct, then, that there's some
15 things that you would probably change if you were to
16 recreate this analysis today?

17 A. Yes.

18 Q. Can you tell me what those changes might
19 be?

20 A. I don't know all of the changes that
21 have been made, but I do know that time was spent
22 reconciling serial numbers, duplicating identifiers
23 to the extent they were relevant, and potentially
24 locations of certain machines in the months after.

25 Q. And when you say reconciling, does that

1 refer -- sorry. Strike that.

2 Do you recall earlier testifying that
3 there was an ongoing process of comparing the
4 various sources and records of the debtor? Do you
5 recall that?

6 A. Yes.

7 Q. When you refer to the reconciliation
8 process for this Exhibit 7, is that the same
9 process?

10 A. If this was the version that was
11 produced to Enigma, yes, this was what we thought at
12 the time was close to a final version and may have
13 changed after that with new or better information.

14 Q. Could we turn then to Tab 34 in your
15 binder. Which I ask be marked as Exhibit 8.

16 (Exhibit 8 marked.)

17 BY MR. KISSNER:

18 Q. Do you recognize this document?

19 A. Yes.

20 Q. Could you describe it?

21 A. This appears to be an e-mail thread
22 between myself and you with other members of
23 professionals -- professional firms from the estate
24 cc'd.

25 Q. Do you recall sending this e-mail?

1 A. Yes.

2 Q. You do, okay.

3 And could you please read for me your
4 message at the top dated April 7th at 11:48 a.m.

5 A. Yes. Hi, Andrew, the company has
6 produced an updated reconciliation of inventory by
7 location across the fleet. In this file can you
8 find a spread of the Enigma schedule Enigma file in
9 its UCC that lists the LIDs associated with its
10 collateral. The result of the reconciliation was
11 that there are 537 LIDs marked as rejected that also
12 appear in Enigma's UCC schedule.

13 Q. Okay. Great.

14 Do you know what the file attached
15 refers to?

16 A. I don't see it on the e-mail chain, but
17 I believe it is this file (indicating).

18 Q. And when you say "this file," you're
19 referring to Exhibit 7, the spreadsheet in front of
20 you?

21 A. Yes, the spreadsheet.

22 MR. KISSNER: We can go off the record.

23 (A recess is taken.)

24 MR. KISSNER: Back on the record.

25 BY MR. KISSNER:

1 Q. Now, Mr. James, have you personally ever
2 performed an inventory or other analysis to identify
3 which of the debtor's kiosks are pledged to which
4 lender?

5 A. Can you clarify, do you mean on this
6 particular project?

7 Q. Sure. Let's take a step back.
8 So you said before that Enigma is a
9 secured lender to the debtor, correct?

10 A. Yes.

11 Q. Does the debtor have other secured
12 lenders?

13 A. Yes, to my knowledge.

14 Q. Who are they?

15 A. Actual lenders, I believe Genesis,
16 AV Tech maybe. I don't know if I would characterize
17 them as a lender, but I believe they are. And the
18 post-petition financing from the DIP facility.
19 Right now that's -- those are the lenders that I
20 know of.

21 Q. Okay. And each of those parties, "those
22 parties" being Genesis, AV Tech, the post-petition
23 lender and Enigma, they all claim a security
24 interest in the debtor's property, correct?

25 A. Correct.

1 Q. What type of property do they claim an
2 interest in?

3 A. I believe Genesis has a blanket lien,
4 though cash to my understanding is unencumbered. I
5 believe Enigma had a lien on certain kiosks. And I
6 believe AV Tech also had an interest in certain
7 kiosks.

8 Q. And the DIP lender?

9 A. I believe the DIP lender had a lien on
10 everything of the debtor's estate.

11 Q. And when you say the DIP lender had a
12 lien on everything, would that include a lien on
13 certain of the debtor's kiosks?

14 A. I believe so, but I believe they were
15 supposed to marshal the cash.

16 Q. Okay. Before you said Genesis had a
17 blanket lien, correct?

18 A. That's my understanding.

19 Q. Would the blanket lien of Genesis then
20 include certain of the debtor's kiosks?

21 A. Yes.

22 Q. So would it be fair to say that at least
23 four parties assert an interest in kiosks of the
24 debtor?

25 A. At least they did before the DIP was

1 paid off.

2 Q. Fair enough.

3 At certain points then during this case,
4 there were at least four parties that claimed an
5 interest in kiosks of the debtor, correct?

6 A. Correct.

7 Q. Okay. Now, have you then ever had to
8 perform an inventory or an analysis to determine
9 which kiosks were pledged to which lender?

10 A. Yes, we've -- yes we've created several
11 drafts of this analysis.

12 Q. Okay. And do you still have Exhibit 7,
13 the Excel, up in front of you?

14 A. One second.

15 Q. Certainly.

16 A. Yes.

17 Q. And is Exhibit 7 one of these analyses
18 or iterations of analyses?

19 A. Yes.

20 Q. Okay. Now, turn back -- it might
21 already be in front of you, but it's Tab 34 in your
22 binder which had been marked as Exhibit 8.

23 A. Yes, I'm there.

24 Q. And do you see in your message of
25 April 7th at 11:48 a.m. where you said that the

1 kiosks reconciliation, quote, lists -- sorry.

2 Strike that.

3 Do you see where in your message dated

4 April 7th at 1138, you say that the attached file,

5 quote, lists the LIDs associated with its

6 collateral, end quote?

7 A. Yes.

8 Q. Did you understand "its collateral" to

9 refer to Enigma's collateral?

10 A. Yes.

11 Q. And then in the next sentence do you see

12 where it says there are 537 LIDs marked as rejected

13 that also appear in Enigma's UCC schedule, end

14 quote?

15 A. Yes.

16 Q. What is LID?

17 A. It's an acronym for location ID.

18 Q. Okay. And what is a location ID with

19 respect to a kiosk?

20 A. My understanding from conversations with

21 former employees and employees of the debtor is that

22 a location ID is an identifier given to a particular

23 location.

24 Q. So would it be fair to say that you've

25 used location ID as a way of identifying Enigma's

1 collateral?

2 A. I believe I noted 537 LIDs that also
3 appeared in Enigma's UCC schedule.

4 Q. So you don't -- sorry. Strike that.

5 So you did not use LID as a means by
6 which to identify Enigma's collateral?

7 A. I believe Enigma identified LIDs in its
8 UCC filing.

9 Q. Uh-huh.

10 A. That were also found in the debtor's
11 records. And the machine may have been at that
12 location but was not, to my understanding, from
13 conversations with counsel, an identifier that can
14 be used by itself to identify collateral.

15 Q. Okay. Well, why don't you read the next
16 paragraph of this e-mail which is Exhibit 8. And
17 can you read it aloud.

18 A. Yes. The file notes which motion the
19 rejection was part of and the address of the
20 location. This spreadsheet should contain the
21 information necessary to identify Enigma's
22 collateral as it relates to the motions to reject.

23 Q. Okay. That's fine.

24 So this says that there's a spreadsheet
25 attached to Exhibit 8. Fair?

1 A. (Nods head in the affirmative.)

2 Q. And we've ascertained that that
3 spreadsheet is Exhibit 7 which you have in front of
4 you, correct?

5 A. (Nods head in the affirmative.)

6 Q. And this says that the spreadsheet
7 contains information to identify Enigma's
8 collateral, correct?

9 A. Yes.

10 Q. And based off of that spreadsheet,
11 you've identified 537 machines as Enigma's
12 collateral; is that fair to say?

13 A. No.

14 Q. Why do you disagree with that statement?
15 Why not?

16 A. The sheet contains the debtor's records
17 at the time of the serial numbers and where the
18 debtor believed that machine tied to that serial
19 number was relative to the LID of that machine.
20 Said differently, a serial number was believed to be
21 at that LID, for the location tied to that LID, and
22 Enigma likely had an interest in machines tied to
23 those serial numbers.

24 Q. Okay. Can you turn to the
25 second-to-last page, then, of Exhibit 8, which let

1 me know when you're there. It's Tab 34 in front of
2 you.

3 A. I see. Is this the page you're
4 referencing (indicating)?

5 Q. Yeah. It's an e-mail from Kissner,
6 Andrew, March 30th. Do you see that?

7 A. Yes.

8 Q. Would it be fair to say this is an
9 e-mail from me, Andrew Kissner, to, among others,
10 you?

11 A. Yes.

12 Q. And can you read this e-mail. You don't
13 need to read it out loud, but can you just take your
14 time and review it.

15 A. Okay.

16 Q. Do you recall receiving this e-mail?

17 A. Yes.

18 Q. Can you maybe summarize in your own
19 words what this e-mail says? Actually, you know,
20 strike that.

21 Do you recall the context for this
22 e-mail?

23 A. Yes.

24 Q. What was that context?

25 A. To my memory, this was an e-mail sent by

1 you, Andrew Kissner, pointing out potential concerns
2 in the company's data as it relates to Enigma's
3 collateral.

4 Q. Did the -- strike that.

5 In the context of bankruptcy, do you
6 know what rejection means?

7 A. Rejection?

8 MR. MANN: I'm just going to say
9 objection, legal conclusion.

10 BY MR. KISSNER:

11 Q. You can answer.

12 A. Rejection generally of a contract or
13 lease.

14 Q. I'm not asking for, you know, a legal
15 opinion or anything but would it be -- would it
16 comport with your understanding that I would say
17 that rejection of a contract means that a debtor is
18 repudiating that contract, they don't want it?

19 MR. MANN: I'm still objecting this is a
20 legal conclusion. He's not here as a legal expert.

21 MR. KISSNER: That's fine.

22 BY MR. KISSNER:

23 Q. You can answer.

24 A. Can you use a different word than
25 repeating it?

1 Q. In your experience in doing corporate
2 restructuring work is it fair to say that debtors
3 sometimes are parties to burdensome contracts?

4 MR. MANN: I'm just going to say
5 objection, this is going beyond the scope of the
6 topics. He's here representing Coin Cloud and these
7 questions I feel are more targeting directly to him
8 as an individual.

9 MR. KISSNER: Well, first I'd ask that
10 you probably stop with the speaking objections. I
11 mean I've been trying to give you some rope, but
12 just "objection to form" is plenty.

13 I mean we have an e-mail here and it's
14 like pulling teeth getting him to tell me what the
15 e-mail says so we have to start with basics so
16 that's what we're going to do.

17 BY MR. KISSNER:

18 Q. So in your experience doing corporate
19 restructuring would it be fair to say that debtors
20 sometimes find themselves party to burdensome
21 contracts?

22 A. Yes.

23 Q. And would it -- would it comport with
24 your understanding if I were to tell you that
25 rejection is one way to get out of a burdensome

1 contract?

2 MR. MANN: Objection to form.

3 THE WITNESS: Yes.

4 BY MR. KISSNER:

5 Q. Did the debtor reject any contracts in
6 its current Chapter 11 case?

7 A. Yes.

8 Q. And did the debtor, to your
9 recollection, reject any agreements relating to its
10 kiosks?

11 A. I believe the debtor rejected at least
12 leases where kiosks were installed.

13 Q. And do you know what happened to the
14 kiosks at those locations?

15 A. My understanding is they were either
16 surrendered to the lender or abandoned.

17 Q. Okay. So does that refresh your
18 recollection as to the context in which this e-mail
19 was sent?

20 A. Yes.

21 Q. Okay. Can you maybe more fully describe
22 the context in which this e-mail was sent?

23 A. I believe this e-mail was sent in the
24 context of trying to understand where Enigma's
25 collateral was.

1 Q. And is another way to say that this
2 e-mail was sent in aid of identifying Enigma's
3 collateral that was being abandoned?

4 MR. MANN: Objection. Asked and
5 answered.

6 THE WITNESS: I believe the context of
7 this was to identify locations or LIDs that were
8 rejected and where the debtor's records indicated
9 certain machines might be relative to those location
10 IDs.

11 BY MR. KISSNER:

12 Q. Do you recall that there was some
13 confusion around the time of March 2023 as to which
14 leases were for locations at which Enigma's
15 collateral was located?

16 MR. MANN: Objection. Form.

17 THE WITNESS: I do remember Enigma
18 having that concern and I do remember us undergoing
19 the reconciliation of the inventory.

20 BY MR. KISSNER:

21 Q. Okay. So would it be fair to say, then,
22 that Enigma was having some trouble identifying its
23 collateral that was being abandoned?

24 A. Yes.

25 Q. And so would it be fair to say that this

1 e-mail was sent requesting assistance in identifying
2 that collateral?

3 MR. MANN: Objection. Speculation.

4 BY MR. KISSNER:

5 Q. I could rephrase.

6 Does this e-mail appear to have been
7 sent in order to obtain assistance in identifying
8 Enigma's collateral?

9 A. It appears that this e-mail is pointing
10 out discrepancies in the data as it relates to the
11 rejection motions and which collateral -- or where
12 certain collateral was as it relates to those
13 rejection motions.

14 Q. And in response to that request, you
15 said that there had been 537 LIDs marked as
16 rejected, correct?

17 MR. MANN: Objection. Form.

18 THE WITNESS: I believe I said the
19 results of the reconciliation was that there were
20 are 537 LIDs marked as rejected that also appear in
21 Enigma's UCC schedule.

22 BY MR. KISSNER:

23 Q. So you did not send a response to help
24 Enigma identify its collateral?

25 A. I believe we sent the file which gave

1 Enigma the same information we had about where the
2 collateral was and who likely encumbers that
3 collateral at least on a first lien basis.

4 BY MR. KISSNER:

5 Q. So then tell me, how would you identify
6 collateral as belonging to a particular secured
7 lender?

8 MR. MANN: Objection to form.

9 THE WITNESS: I believe the best way to
10 identify the collateral would be to physically
11 inventory the serial numbers on the hardware, as my
12 understanding from conversations with counsel.

13 BY MR. KISSNER:

14 Q. Do you know if all of the debtor's
15 kiosks had serial numbers?

16 A. I don't believe they do based on my
17 conversations with employees of the company and
18 former employees of the company, but I believe that
19 most of them do.

20 Q. Okay. And you said that the best way to
21 identify collateral would be to physically inspect
22 the machine; is that correct?

23 MR. MANN: Object to form.

24 THE WITNESS: My understanding based on
25 what I've learned to this point today is that

1 physically looking at the serial number on a machine
2 would be the most reliable way of identifying who
3 had a lien on that machine.

4 BY MR. KISSNER:

5 Q. That's fine. It's not a trick question.
6 I was just -- I thought a minute ago you said that
7 the best way to identify collateral would be a
8 physical inspection so I just wanted to make sure I
9 had that right.

10 Would it be fair to say that there's
11 other ways by which one could identify collateral,
12 even if not the best?

13 A. You -- the next best would likely be
14 using the debtor's records of the serial numbers at
15 least in identifying if a machine sitting in front
16 of you or a machine in any particular location
17 belonged or was encumbered by a lender. The
18 debtor's records would be the next best.

19 Q. And to be clear I have that right, by
20 "debtor's records," you mean the debtor's records of
21 machine serial numbers?

22 A. Yes.

23 Q. Is there a way to identify collateral
24 that doesn't have a serial number?

25 A. A machine that doesn't have a serial

1 number, though I don't know if this is legally true,
2 you could try to match up the software and location
3 IDs, though that doesn't guarantee the hardware is
4 the same hardware that had that software ID or LID
5 previously, if it was moved or reprogrammed at some
6 point prior to you inspecting that machine.

7 Q. Okay. So one way of identifying
8 collateral then is by software ID?

9 MR. MANN: Objection to form.

10 THE WITNESS: Only if that software ID
11 for that hardware has never changed.

12 BY MR. KISSNER:

13 Q. Okay. And another way to identify
14 collateral, if not the best, a way to identify
15 collateral is location ID?

16 A. I don't know if -- legally if a location
17 is a proper way of identifying collateral, but if
18 the machine had never moved, you could assume that
19 that was the same machine that was previously
20 encumbered.

21 Q. Okay. Could we go back to Exhibit 7
22 which is the spreadsheet that's in front of you, I
23 believe. Do you have it open?

24 A. Yes.

25 Q. Okay. Could you go to cell I-4?

1 A. Yes.

2 Q. And can you tell me what I-4 says?

3 A. 3,301.

4 Q. Is it 3,301 or 3,303?

5 A. I apologize. I misspoke. 3,303.

6 Q. What do you understand that number to
7 represent?

8 A. My memory of the spreadsheet is that
9 this -- this is the count of LIDs that the debtor
10 believed also appeared in Enigma's UCC.

11 Q. So is it fair to say that if one were to
12 attempt to identify collateral by LID, then
13 approximately 3,300 machines would be -- that's a
14 terrible question. Please strike that.

15 Okay, that's fine?

16 Can you tell me what CCID is?

17 A. Yes. From my understanding of
18 conversations with employees and former employees,
19 the CCID is an ID not physically on the machine, not
20 always physically on the machine, but that is
21 sometimes an ID of the software on the machine, sort
22 of like a name.

23 Q. Before you referred to a software ID.
24 Is that the same thing as CCID?

25 A. I think in most instances, yes. There

1 were -- oh, actually I apologize. Yes, the CCID is
2 the software ID. Those are the same.

3 Q. Okay. And can you look at cell J-4?

4 A. Yes.

5 Q. And can you tell me what it says?

6 A. 3,676.

7 Q. And what do you understand that number
8 to represent?

9 A. Without directly checking, it sounds
10 like the number Enigma listed in its UCC filing.

11 Q. And by that you mean the number of
12 machines with a corresponding software ID that
13 matched the debtor's books and records?

14 A. Sorry, I think I maybe misunderstood
15 your question.

16 This cell is the number of CCIDs. Maybe
17 it was referenced differently in the UCC schedule.
18 The number of CCIDs in the debtor's records that
19 also matched an Enigma UCC, CCID.

20 Q. Okay. We're on the same page. Okay.

21 And then finally can you go over to cell
22 H-4?

23 A. Yes.

24 Q. Can you tell me what it says?

25 A. 3,092.

1 Q. Can you tell me what you understand that
2 number to represent?

3 A. The number of serial numbers in the
4 debtor's records that matched a serial number in
5 Enigma's UCC schedule or at least the Excel version
6 that was used in this analysis.

7 Q. Okay. And I know the -- we all want to
8 stop looking at this spreadsheet so I'm going to try
9 and sum up.

10 So would it be fair to say that, based
11 off of LID, this document would suggest that 3,303
12 machines were pledged to Enigma?

13 A. Sorry, can you repeat your question?

14 MR. KISSNER: Could you read it back.

15 (The record is read by the reporter.)

16 THE WITNESS: If you were to conclude
17 that LID's an indicator of encumbrance, yes, if you
18 were to only use LID.

19 BY MR. KISSNER:

20 Q. So if you were to use LID, this document
21 would suggest that there were 3,303 kiosks in
22 Enigma's collateral package, correct?

23 A. Or at least that appeared in the UCC
24 schedule.

25 Q. Correct, but if we assume that's right

1 and we assume -- this is a legal conclusion, but if
2 I were to tell you that LID was relevant to this,
3 then based off of this document, it would appear
4 that 3303 of the debtor's kiosks were pledged to
5 secure Enigma's loan, correct?

6 A. Yes, assuming there were no other
7 identifiers that contradicted it.

8 Q. Okay. And if one were to use serial
9 numbers to identify collateral, then this document
10 would suggest that 3,092 machines were pledged to
11 secure Enigma's loan, correct?

12 A. Correct.

13 Q. And if one were to assume that CCID or
14 software ID could be used to identify collateral
15 then this document would suggest that 3,676 machines
16 were pledged to secure Enigma's loan, correct?

17 A. Correct. At this time -- sorry, at the
18 time of this document.

19 Q. Do you recall if -- the UCC filing that
20 we were discussing earlier, that suggested that
21 Enigma's collateral consisted of 3,677 machines,
22 correct?

23 MR. MANN: Object to form.

24 THE WITNESS: Yes, I remember that
25 conversation.

1 BY MR. KISSNER:

2 Q. You recall that. Okay.

3 And do you recall the security agreement
4 that we were discussing before, that also says that
5 3,677 machines are Enigma's collateral, correct?

6 MR. MANN: Object to form.

7 THE WITNESS: Yes.

8 BY MR. KISSNER:

9 Q. Okay. And 3,677, that's pretty close to
10 3,676, wouldn't you say?

11 A. Yes.

12 Q. Okay. And 3,676, then is the number of
13 machines listed in this spreadsheet by CCID as
14 belonging to Enigma, correct?

15 A. Sorry, you said 3,676?

16 Q. Correct.

17 A. Yes.

18 Q. So would it be fair to say, then, that
19 the security agreement and the UCC filing, they
20 appear to identify Enigma's collateral based off of
21 CCID?

22 A. Yes, they appear to.

23 MR. KISSNER: Okay. I think we can turn
24 off the Excel for now.

25 So I was thinking we'd break for lunch

1 around one. That's like in an hour.

2 MR. MANN: Sure.

3 BY MR. KISSNER:

4 Q. Okay. I'm going to ask you to go to

5 Tab 7 in your binder.

6 And I'm going to ask the reporter to

7 mark that as Exhibit 9, I think we're up to?

8 (Exhibit 9 marked.)

9 BY MR. KISSNER:

10 Q. Are you there?

11 A. Yes.

12 Q. Do you recognize this document?

13 A. Yes.

14 Q. Can you describe what it is?

15 A. This is a term sheet summarizing the
16 material terms of the DIP facility with CKDL Credit.

17 Q. And who's CKDL Credit?

18 A. The debtor's post-petition DIP financier.

19 Q. So would it be fair to characterize this
20 as a term sheet received from the DIP lender for a
21 proposed DIP loan?

22 A. Yes.

23 Q. If we turn to Schedule 1 of this
24 document, which is the second to last page, do you
25 know what this is?

1 A. Yes.

2 Q. What is it?

3 A. This is a 13-week cash flow for Coin
4 Cloud's Chapter 11 bankruptcy.

5 Q. And what's a 13-week cash flow in
6 general terms?

7 A. Forecast of the debtor's cash receipts
8 and disbursements.

9 Q. 13-week cash flows are pretty common in
10 most bankruptcy cases in your experience; is that
11 fair to say?

12 A. Yes.

13 Q. Did you prepare the 13-week cash flow?

14 A. With assistance from counsel and other
15 members of Province, yes.

16 Q. And do you know when this was prepared?

17 A. I don't know when this particular
18 version was prepared --

19 Q. Okay. Well --

20 A. -- Off the top of my head.

21 Q. And that's fair. It's not a memory
22 test.

23 Can you flip back, I guess, two pages to
24 pages eight and nine of Exhibit 9, which remains
25 Tab 7?

1 A. Got it. I'll never get the hang of it.

2 Q. Nor do I.

3 A. You said pages eight and nine?

4 Q. Yeah, pages eight and nine. I think
5 you're there.

6 Could you describe what pages eight and
7 nine to this exhibit are?

8 A. Signatures to the term sheet with CKDL
9 that is executed by John Crane and Christopher
10 McAlary.

11 Q. And do Mr. Crane's and Mr. McAlary's
12 signatures have dates next to them?

13 A. Yes.

14 Q. And what date is that?

15 A. January 23, 2023.

16 Q. So does that reflect -- sorry. Strike
17 that.

18 Does that refresh your recollection as
19 to when this 13-week cash flow forecast may have
20 been created?

21 A. Yes. It must have been at least around
22 then, if not before.

23 Q. And by around then, you mean the 13-week
24 cash flow statement was likely prepared on or about
25 January 23, 2023?

1 A. Yeah. I would conclude that based on
2 that.

3 Q. In preparing for this -- I confess I did
4 this on a screen -- I did not realize how small the
5 text was going to be on the page.

6 But assuming that you can read that, I'm
7 in the first column of this spreadsheet. Can you go
8 down to where it says "kiosk cash."

9 A. Yes.

10 Q. Can you tell me what kiosk cash refers
11 to?

12 A. Kiosk cash is the debtor's record of how
13 much cash is spread across its fleet of kiosks.

14 Q. And if you go one row down to "beginning
15 balance," do you see that?

16 A. Yes.

17 Q. And if you go two columns over, still in
18 the row "beginning balance," it's a column that says
19 at the top "petition date week one." Do you see
20 that?

21 A. Yes.

22 Q. Can you read for me the amount in that
23 column?

24 A. In the beginning balance?

25 Q. Yes.

1 A. \$5,221,473.

2 Q. So do you understand this to mean that
3 at least at this time there was projected to be
4 about \$5.2 million in the debtor's kiosks as of the
5 week ending January 30th, 2023?

6 A. Yes.

7 Q. And staying in that row can you go one
8 column over to where it says "week two"?

9 A. Yes.

10 Q. Can you read to me what that says?

11 A. The beginning balance?

12 Q. Yes.

13 A. \$5,221,473.

14 Q. Okay. And do you understand this to
15 mean that there was approximately \$5.2 million
16 projected to be in the debtor's kiosks as of the
17 week ending February 6th?

18 A. Yes.

19 Q. Okay. Great.

20 Could you turn to Tab 6 in your binder,
21 which I guess for now is Exhibit 10. Can you mark
22 that.

23 (Exhibit 10 marked.)

24 BY MR. KISSNER:

25 Q. And are you there?

1 A. Yes.

2 Q. Great. Okay.

3 Do you recognize this document?

4 A. Yes.

5 Q. Can you tell me what it is?

6 A. It's a revised motion for interim and
7 final orders authorizing the debtor to obtain
8 post-petition, senior secured, superpriority
9 financing, granting liens and superpriority claims,
10 modifying the automatic stay, scheduling final
11 hearing and granting related relief among other
12 things.

13 Q. So would it be fair to say in plain
14 English this was a motion to approve a DIP loan for
15 the debtor?

16 A. Yes.

17 Q. Could you turn to the second to last and
18 final page. Are you there?

19 A. You're referring to the budget?

20 Q. Yeah, I'm referring to Exhibit A to
21 interim DIP order. Do you see that?

22 A. Yes.

23 Q. Do you know what Exhibit A to the
24 interim DIP order is?

25 A. Yes, it's a 13-week cash flow budget.

1 Q. Okay. Do you recall if this was a
2 revised version of the 13-week cash flow forecast we
3 were looking at before that was marked as Exhibit 9?

4 A. I don't recall this particular version,
5 but I know that the light blue likely means that it
6 was a period of actuals.

7 Q. Okay. Fair. Sorry, not a trick
8 question.

9 So this is also a 13-week cash flow
10 forecast, correct?

11 A. Yes.

12 Q. And the column in light blue that says
13 week zero, you said that likely indicates it was
14 based off of actual data?

15 A. Yes.

16 Q. Did you prepare this Exhibit A to the
17 interim DIP order?

18 A. Yes, or at least helped prepare.

19 Q. Who else would have helped prepare it?

20 A. I would have gotten comments from both
21 counsel and other members of Province.

22 Q. And when you say counsel you mean
23 counsel to the debtor --

24 A. Yes.

25 Q. -- or somebody else?

1 Okay?

2 A. Counsel to the debtor.

3 Q. And do you know when this revised cash
4 flow forecast was prepared?

5 A. Off the top of my head, I do not, but
6 before February 13th.

7 Q. Okay.

8 A. And likely after January 30th.

9 Q. Fair enough.

10 And so again, I'm going to ask you to go
11 to the first column down to where it says "kiosk
12 cash."

13 A. Okay.

14 Q. Kiosk cash still refers to cash in the
15 debtor's kiosks, fair?

16 A. Yes.

17 Q. And if you could go down one row to
18 beginning balance and then one column over to week
19 zero, and can you read what that says. Sorry, this
20 one seems even smaller than the last.

21 A. Five -- sorry, \$5,328,167.

22 Q. So do you understand this to mean that
23 there was approximately \$5.3 million of cash
24 actually in the kiosks as of the week ending
25 January 30th?

1 A. Yes.

2 Q. And can we go one column over to
3 "petition date" and can you read the number there,
4 same row?

5 A. \$5,380,061.

6 Q. And so do you understand this to mean
7 that there was approximately \$5.4 million projected
8 to be in the kiosks as of the week ended
9 February 6th?

10 A. At least at the beginning of the week,
11 yes.

12 Q. So if a lender had foreclosed on kiosks,
13 there would have been some cash inside the machines
14 then, fair?

15 A. Inside of the machines foreclosed on?

16 Q. Yeah.

17 A. Yes.

18 Q. And based off of this revised cash flow
19 forecast -- and I realize these are estimates, but
20 if all of the machines had been foreclosed and
21 repossessed, there would have been somewhere around
22 5.3 or \$5.4 million inside all of the machines?

23 MR. MANN: Objection to form.

24 THE WITNESS: Yes.

25 BY MR. KISSNER:

1 Q. Okay. So if Enigma had foreclosed on
2 its machines in January, say, there would have been
3 some cash inside of the machines?

4 MR. MANN: Objection to form.

5 THE WITNESS: Assuming there was cash in
6 those particular machines.

7 BY MR. KISSNER:

8 Q. That's fair.

9 Do you have any sense of how much cash
10 was inside Enigma's machines in January of 2023?

11 A. No, I do not.

12 Q. And I'm not asking you to speculate,
13 just asking if you're aware.

14 A. Not at this moment, no, I don't remember
15 doing that analysis.

16 Q. Okay. And do you recall how much --
17 strike that.

18 Do you know how much cash would have
19 been in Enigma's machines the week ending
20 February 6th?

21 A. No. The debtor may have been able to
22 produce those records but I do not know right now.

23 Q. Would you be able to estimate how much
24 cash were in Enigma's machines --

25 A. No.

1 Q. -- at that time? Okay.

2 Well, do you know how many kiosks the
3 debtor owns in total?

4 A. The records as I remember are -- show
5 above 7,000 at least at the beginning of the
6 Chapter 11.

7 Q. And do you recall how many kiosks were
8 in the field?

9 A. I believe around if not a little above
10 5,000.

11 Q. Okay. If I were to say 5700, does that
12 ring a bell?

13 A. Yes.

14 Q. Okay. And before we established that,
15 assuming that CCID is a relevant manner of
16 identifying collateral, that about 3700 of the
17 debtor's kiosks are Enigma's?

18 A. I believe about 3700 of the kiosks had
19 CCIDs listed in Enigma's UCC filing.

20 Q. But if we were to assume that having a
21 listed CCID meant that a machine was Enigma's
22 collateral, which is a legal conclusion, but if we
23 were to make that assumption, then about 3700
24 machines were pledged to Enigma, correct?

25 A. Yes, assuming AV Tech didn't also have a

1 claim to those machines.

2 Q. Okay. But assuming that nobody else had
3 a claim on those machines, then you recall that
4 approximately 3700 machines could be Enigma's?

5 A. Yes.

6 Q. And if one were to divide 3700 by 5700,
7 say, would that represent a rough proportion of how
8 many machines were Enigma's?

9 A. Sorry, can you rephrase your question?

10 Q. Sure. So we established that at least
11 under one metric Enigma had approximately 3700
12 machines pledged to it, right?

13 A. (Nods head in the affirmative.)

14 Q. And we also established or you seem to
15 recall that somewhere in the ballpark of 5700
16 machines are in the field, right, or were in the
17 field at this time, right?

18 A. Yes.

19 Q. So if one were to divide 3700 by 5700,
20 that would roughly represent the proportion of field
21 machines that are Enigma's?

22 MR. MANN: Object to form.

23 THE WITNESS: Yes.

24 BY MR. KISSNER:

25 Q. And so if one were to want to come up

1 with an estimate of how much cash was in machines
2 pledged to Enigma at a given time, could a rough
3 estimate of that be obtained by taking the
4 percentage of machines pledged to Enigma and
5 multiplying it by \$5.3 million?

6 MR. MANN: Object to form.

7 THE WITNESS: Yes, assuming no cash is
8 in the machines in the warehouses or other storage,
9 and assuming that the reporting of the cash was
10 correct.

11 BY MR. KISSNER:

12 Q. That's fair.

13 Do you recall -- did Enigma ever
14 actually foreclose on its collateral?

15 A. I do not recall.

16 Q. If I were to tell you that Enigma didn't
17 foreclose on its collateral, would you have a reason
18 to think that's inaccurate?

19 A. No, not to my knowledge.

20 Q. And do you have any understanding or
21 recollection of why Enigma didn't foreclose on its
22 collateral?

23 A. I do not.

24 Q. Do you recall if Enigma had entered into
25 a forbearance agreement with the company at any

1 point?

2 A. I've certainly seen forbearance
3 agreements with Enigma, between Enigma and the
4 company.

5 Q. And are you familiar with what a
6 forbearance agreement is generally speaking?

7 A. Yes.

8 Q. If a lender and a borrower were party to
9 a forbearance agreement, in your experience would
10 that lender be permitted to foreclose on its
11 collateral?

12 A. I'm not sure I know the answer to that.
13 I would assume it would be circumstantial.

14 Q. That's fair enough.

15 So you said you recall seeing
16 forbearance agreements for Enigma and the company at
17 some point?

18 A. Yes.

19 MR. KISSNER: Could we go to Tab 8 which
20 I'll ask be marked as Exhibit 11.

21 (Exhibit 11 marked.)

22 BY MR. KISSNER:

23 Q. Have you seen this document before? Do
24 you recognize it?

25 A. I'm not sure I've seen this particular

1 document, but the form of it looks similar to the
2 others that I believe I've seen.

3 Q. And can you tell me what this document
4 appears to be, then?

5 A. A conditional forbearance letter in
6 relation to an \$8 million secured loan facility
7 between Cash Cloud, the borrower, and Enigma
8 Securities Limited, the lender.

9 Q. Can you go to Tab 9 which would be
10 Exhibit 12.

11 (Exhibit 12 marked.)

12 BY MR. KISSNER:

13 Q. Do you recognize this document?

14 A. I recognize it in that it looks similar
15 to the last and one of the maybe more recent
16 forbearance letters that Enigma has had with Coin
17 Cloud.

18 Q. So this appears to also be a forbearance
19 agreement, fair?

20 A. Yes.

21 Q. And then could you turn to Tab 10 which
22 I'll ask be marked as Exhibit 13.

23 (Exhibit 13 marked.)

24 BY MR. KISSNER:

25 Q. Do you recognize this document?

1 A. In that it's similar to the last and
2 others that I may have seen, yes. I believe I may
3 have seen the third. This is maybe where the
4 debtor's records have been given to us that we've
5 seen.

6 Q. So what does this document Exhibit 13
7 appear to be?

8 A. Another conditional forbearance letter,
9 the third.

10 Q. And can you look at paragraph A?

11 A. Yes.

12 Q. And can you read the first sentence?

13 A. The maturity date of the loan occurred
14 on October 11th, 2022.

15 Q. And do you understand the loan, that
16 refers to the Enigma secured loan that we've been
17 talking about today?

18 A. That makes sense.

19 Q. Okay. And can you go to the next page
20 to paragraph G?

21 A. Yes.

22 Q. And can you read that sentence?

23 A. Subject to borrower's satisfaction of
24 the conditions precedent set forth immediately below
25 in this paragraph G, lender hereby agrees to

1 conditionally forbear, the conditional forbearance,
2 from exercising its rights and remedies under the
3 loan documents or applicable law arising from the
4 subject default during the forbearance period
5 defined below.

6 Q. Okay. So in English this says that
7 Enigma is going to forbear from exercising rights
8 and remedies during a defined period; is that fair?

9 MR. MANN: Objection to form.

10 THE WITNESS: It agrees to conditionally
11 forbear from exercising its rights and remedies
12 under the loan documents or applicable law arising
13 from subject default during forbearance period.

14 BY MR. KISSNER:

15 Q. Could you go to the next page,
16 Paragraph L.

17 A. Yes.

18 Q. And can you read what paragraph L says?

19 A. For the purpose of this letter
20 agreement, forbearance period means the period
21 commencing on February 2nd, 2023, and terminating on
22 the earliest to occur of the following, 11:59 p.m.
23 PST on February 8th, 2023, and the date of default
24 by borrower under this letter agreement or any
25 further default under the terms of the other loan

1 documents other than the subject default.

2 Q. Do you know when the debtor filed for
3 bankruptcy?

4 A. I believe it's February 7th, 2023, or
5 8th, one of the two.

6 Q. So would it be fair to say that at the
7 time of the bankruptcy filing, Enigma remained
8 subject to this forbearance agreement?

9 MR. MANN: Objection to form.

10 THE WITNESS: Sorry. Could you repeat
11 your question.

12 MR. KISSNER: Sure. Can you read that
13 back.

14 (The record is read by the reporter.)

15 MR. MANN: I'll object this is going
16 beyond the topics that we presented him here for.
17 This isn't relating to the collateral, this is
18 specifically the forbearance with Enigma which we
19 wanted Chris to be the one that talks about the
20 relationship with Enigma.

21 MR. KISSNER: Yeah, I understand. I'm
22 not quizzing him on this, I'm trying to lay a
23 foundation that's relevant to whether Enigma
24 received a benefit from the surcharge which is one
25 of the elements of the claim. I promise we're

1 almost done with this.

2 MR. MANN: Okay.

3 THE WITNESS: I apologize. Can you
4 repeat it one more time.

5 BY MR. KISSNER:

6 Q. Here, we'll try it a different way.

7 So this says -- and by this I mean the
8 forbearance agreement, says that until the earlier
9 of a default of the borrower under the forbearance
10 agreement or February 8th at 11:59, Enigma agrees to
11 forbear from exercising its rights and remedies
12 under the loan agreement, correct?

13 A. Generally, without context of the rest
14 of the document, yes.

15 Q. And if -- assuming that the borrower was
16 not in default under the forbearance agreement --
17 sorry. Strike that.

18 You said that the bankruptcy was
19 commenced on February 7th?

20 A. I believe so, yes.

21 Q. Okay. So assuming that the borrower was
22 not in default under this forbearance agreement,
23 that February 7th would have been before the
24 expiration of this agreement?

25 A. If the petition date was not

1 February 8th, yes.

2 Q. Fair enough.

3 I think that's all I have on that one.

4 MR. KISSNER: What time is it? Oh,
5 perfect. Sorry, I just want to make sure I'm not
6 missing anything.

7 BY MR. KISSNER:

8 Q. Okay. Could we turn back to Tab 3 in
9 your binder which I believe was marked as Exhibit 2.
10 Are you there?

11 A. Yes.

12 Q. And this was your surcharge declaration,
13 correct?

14 A. Yes.

15 Q. Can you turn to Exhibit A to the
16 surcharge declaration which is on page 8.

17 A. Yes.

18 Q. Okay. And if I refer -- you might have
19 done this before, but I just -- there's a lot of
20 documents. I don't want there to be confusion. If
21 I refer to this as your surcharge analysis you'll
22 understand I'm referring to Exhibit A?

23 A. Yes.

24 Q. Could you walk me through the chart on
25 the first page of Exhibit A?

1 A. Sure. It's a preliminary sale analysis
2 subject to material change, prepared at the request
3 of counsel. All amounts are estimates, not
4 guarantees of actual results. With an inventory
5 summary by unit number -- sorry, by number of units
6 and the distribution of machines by either warehouse
7 or field, with a count of how many machines the
8 debtor believes based on its records are either
9 belonging to Enigma, Genesis or AV Tech, either in
10 the warehouse or warehouses or in the field, and the
11 number of machines the debtor's records estimate are
12 included in the sale of these assets.

13 Q. Okay. And can you go to the second
14 page. Can you walk me through that chart. What
15 does it say or what is it?

16 A. It's a preliminary sale analysis subject
17 to material change, prepared at the request of
18 counsel, with all amounts estimates, not guarantees
19 of actual results, with adjustments to proceeds to
20 the lenders from the sale, which breaks down costs
21 proposed to be surcharged from storing the machines
22 in warehouses to protect them from further
23 destruction or any destruction of their value for
24 \$518,000, with a footnote that reads includes seven
25 months of Deployment Logix invoices at an estimated

1 40,000 a month; two, future months of storage with
2 Morningstar Storage at an estimate of 4K a month;
3 and three, Trangistics estimated accrued but unpaid
4 admin claim of pay of \$230,000. And amounts are
5 subject to change upon further invoice review by the
6 independent director.

7 The next section relates to sale-related
8 costs proposed to be surcharged, an amount of
9 \$1.58 million approximately with a footnote that
10 reads includes \$126,000 Province sale fee,
11 approximately \$27,000 of sale-related noticing and
12 costs from Stretto, and approximately 1.4 million of
13 other sale-related professional fees. Professional
14 fees related to the marketing process may increase
15 with future fee applications.

16 There are two additional notes that
17 disclose that this does not include the warehouse
18 lien from Trangistics, and charges each secured
19 creditor for costs of storage based on the percent
20 of total units in storage multiplied by the total
21 storage costs.

22 Q. And not asking for a legal opinion, but
23 what do you understand the term "surcharge" to mean?

24 A. A charge proposed to be reduced from the
25 proceeds of the sale in order to preserve -- for

1 costs that were meant to preserve the value of the
2 collateral being sold.

3 Q. So is it fair to say then that this
4 chart on page 2 of your surcharge analysis
5 summarizes costs to be surcharged and allocates them
6 to various lenders?

7 A. Correct. But most importantly, the
8 total amount of the costs related to the surcharge.
9 As we know there are disputes over who encumbers
10 what collateral.

11 Q. Understood. And that's a fair point.
12 But in broad strokes this is just a
13 summary of costs to be surcharged and then a
14 proposal of how to allocate those costs among
15 lenders?

16 A. Correct.

17 Q. Okay. And the chart on page 1 of the
18 surcharge analysis, would it be fair to say that
19 this is a summary of your -- sorry. Strike that.

20 Would it be fair to say that the chart
21 on page 1 of your surcharge analysis summarizes the
22 number of machines that you have identified as being
23 pledged to each lender?

24 A. Yes, that were included in the sale
25 specifically.

1 Q. Okay. And so the allocation on page 2
2 to lenders is based off of the machine counts on
3 page 1; is that fair to say?

4 A. Yes.

5 Q. Okay. So your surcharge analysis, it
6 looks like it allocates some costs to Enigma, right?

7 A. Correct.

8 Q. How did you determine which costs to be
9 allocated to Enigma?

10 A. Can you clarify any particular group of
11 costs?

12 Q. Just generally -- we can take an
13 example. How about that?

14 So if you look at note one on the chart,
15 it says that the warehouse costs included seven
16 months of Deployment Logix invoices an estimated
17 40,000 a month. Do you see that?

18 A. Yes.

19 Q. Did you allocate some of those
20 Deployment Logix invoices to Enigma?

21 A. Yes.

22 Q. So how did you determine which
23 Deployment Logix invoices' invoiced costs should be
24 allocated to Enigma?

25 A. The surcharge costs related to the

1 warehouse accruals are not allocated based on which
2 warehouse they're stored in.

3 Q. How are they allocated?

4 A. They're allocated based on the total
5 aggregate amount of warehouse costs set forth in
6 this analysis relative to the number of machines the
7 debtor estimates are in the warehouses in the
8 aggregate.

9 Q. And then how are those costs then
10 allocated to Enigma?

11 A. As a percent of the total number of
12 machines in warehouses relative to the percent of --
13 sorry.

14 It's just based on the percent of total
15 machines in the warehouses. So for example,
16 Enigma's 717 machines relative to the total 2,189
17 machines, as a percentage, multiplied by the total
18 costs of warehouse fees in this analysis.

19 Q. Okay. Great.

20 And so then to take another example. Do
21 you see note two to your chart that says includes
22 126,000 Province sale fee?

23 A. Yes.

24 Q. Okay. Is any of that sale fee allocated
25 to Enigma?

1 A. I believe based on my memory that all of
2 the professional fees are allocated based on a
3 percent of the lenders' machines over the total
4 number of machines, so --

5 Q. Okay. Sorry, I didn't mean to cut you
6 off.

7 A. It's essentially distributed based on
8 how many machines the lender encumbers based on the
9 books and records.

10 Q. Okay. So some of the Province sale fee
11 was allocated to Enigma?

12 A. Yes.

13 Q. And that allocation was done based off
14 of the proportion of machines identified as being
15 pledged to Enigma versus all machines that were
16 sold, fair?

17 A. Yes.

18 Q. We've got half an hour.

19 So staying here, this surcharge
20 analysis, it includes some costs incurred by
21 Trangistics; is that correct?

22 A. Yes, costs invoiced to the debtor by
23 Trangistics.

24 Q. Who's Trangistics?

25 A. Trangistics to my understanding is a

1 broker or third -arty logistics company that
2 facilitates storage of some of the debtor's
3 machines.

4 Q. Do you know if Trangistics owns any
5 warehouses?

6 A. My understanding is they do not own the
7 warehouse these machines are in. I don't know if
8 they own any warehouses.

9 Q. Fair enough.
10 Do you understand Trangistics to
11 actually provide storage facilities or something
12 else?

13 A. My understanding is that Trangistics
14 facilitates or facilitated for the company storage
15 of these machines in a warehouse that was climate
16 controlled and well guarded to protect the machines.

17 Q. And do you know how much -- strike that.
18 You said that certain amounts invoiced
19 by Trangistics are included in the surcharge
20 analysis, correct?

21 A. Yes.

22 Q. Do you know how much?

23 A. Off the top of my head I don't remember
24 the total amount specifically related to
25 Trangistics.

1 Q. Okay. Could you look at note one to
2 this chart and then Romanette three and read what it
3 says?

4 A. Yes. Sorry. Trangistics estimated
5 accrued but unpaid admin claim of \$230,000, which I
6 believe included at least a couple months of
7 estimated costs.

8 Q. Okay. So does that refresh your
9 recollection as to how much of Trangistics' costs
10 are included in your surcharge analysis?

11 A. Yes.

12 Q. How much?

13 A. At least 230,000.

14 Q. Okay. Could we turn to Tab 25 in the
15 binder which I think should be marked as Exhibit 14.

16 (Exhibit 14 marked.)

17 BY MR. KISSNER:

18 Q. And have you ever seen this document
19 before?

20 A. I have not seen this document.

21 Q. Can you tell me what it appears to be?

22 A. This is a transcript of motion to reject
23 lease or executory contract for Cash Cloud. It
24 looks like the tenth omnibus for order of entry
25 approving rejection of executory contracts and

1 unexpired leases.

2 Q. Could you turn to page 2.

3 A. Yes.

4 Q. Could you go to the second item listed?

5 A. Application for administrative claim for

6 Trangistics, is that what you're referring to?

7 Q. Correct.

8 Could you read that?

9 A. Application for administrative claim

10 approval filed by Marjorie A. -- apologies if I

11 butcher this -- Guymon on behalf of Trangistics,

12 Inc.

13 Q. So this document appears to be a

14 transcript of a hearing at which Trangistics sought

15 approval of an administrative claim --

16 A. Yes.

17 Q. -- fair? Okay.

18 Could you turn to page 21 of Exhibit 14.

19 And the numbers are up in the top right corner.

20 A. Okay.

21 Q. Can you go to the bottom to line 23. Do

22 you see where it says Ms. McPherson?

23 A. Yes.

24 Q. Do you know who Ms. McPherson is?

25 A. Yes.

1 Q. Who is she?

2 A. She's a attorney with Fox Rothschild.

3 Q. Is she the company's attorney?

4 A. Yes, she is one of the attorneys for the
5 company.

6 Q. Could you turn to the next page,
7 page 22.

8 A. Yes.

9 Q. Could you read what it says starting on
10 line 3?

11 A. There's an agreement between the
12 actual -- what appears to be the actual warehouse
13 owner, Powerhouse, and Trangistics who is the broker
14 for an amount. And then there's -- there was e-mail
15 correspondence regarding the storage of these kiosks
16 with the debtor for a different amount other than
17 the 38,600.

18 Q. Okay. Do you have a sense of -- sorry.
19 Strike that.

20 So 38,600, do you understand that to be
21 the amount that Trangistics alleged that it was owed
22 on a monthly basis by the debtor?

23 A. Yes.

24 Q. Do you recall if 38,600 per month is the
25 figure used in your surcharge analysis?

1 A. I believe so, yes. For at least the
2 estimated periods. If not, it was 38,000 flat. I
3 don't recall which of the two.

4 Q. Okay. And if you could go down to
5 line 14 of the transcript.

6 A. On page 22.

7 Q. Yeah, same page.

8 A. 14?

9 Q. Yes. Can you read the first full
10 sentence on that line?

11 A. And it's our understanding that the
12 warehouse actually charges significantly less,
13 30,500.

14 Q. So the \$30,500-a-month figure, that was
15 not used in your surcharge analysis, correct?

16 A. Correct. For Trangistics, yeah.

17 Q. Do you think that Trangistics' services
18 were necessary for the sale of the collateral?

19 A. I believe they were necessary to store
20 the collateral during the sale process.

21 Q. And do you think that the fees charged
22 by Trangistics were necessary to preserve the
23 collateral for the sale process?

24 A. I believe they are similar to Deployment
25 Logix from my review of the invoices, the other

1 warehousing party.

2 Q. Sorry, you understand what is similar to
3 Deployment Logix?

4 A. I apologize. Can you maybe rephrase
5 your question.

6 Q. Sure. So you said that you think that
7 the services provided by Trangistics were necessary
8 to preserve the collateral for the sale process,
9 correct?

10 A. Yes. And I believe that there may not
11 have been an alternative, given Trangistics'
12 uncooperativeness at some points.

13 Q. Can you tell me what you mean by
14 uncooperativeness?

15 A. I believe we might have had issues with
16 access to these warehouses because of the lien they
17 asserted and the amounts they were demanding.

18 Q. So in other words, they wouldn't let the
19 debtor access its collateral stored at the location?

20 A. I believe so.

21 Q. Do you know if that dispute remains
22 ongoing?

23 A. I don't know if they have allowed access
24 to the collateral at this point today. They may
25 have with the sale to Heller but I know that there

1 is an ongoing dispute with them over their lien or
2 their alleged lien.

3 Q. Do you know if any of the collateral
4 that was sold are in warehouses that were brokered
5 by Trangistics?

6 A. To my knowledge, yes.

7 Q. Okay. Do you know if the buyer has been
8 able to access those machines?

9 A. I don't. I believe they were in
10 discussions, though.

11 Q. Okay. Fair.

12 So setting aside the company's disputes
13 with Trangistics, though, in a certain sense, the
14 services they provide, do you think that was
15 necessary to preserve the collateral that was sold?

16 A. Yes.

17 Q. And Trangistics charged the debtor for
18 those services in the amount of approximately 38,600
19 a month, correct?

20 A. That's my understanding.

21 Q. Do you think that those charges were
22 necessary to preserve the collateral for the sale
23 process?

24 A. I believe the alternative may have been
25 abandoning them if we were not able to access them.

1 Q. Do you think Enigma benefited from those
2 fees being charged by Trangistics?

3 A. I believe that the costs of preserving
4 the collateral allowed the sale, which was approved.

5 Q. Do you think Enigma benefited from that?

6 MR. MANN: Objection. Form.

7 THE WITNESS: I understand that Enigma
8 didn't object to the sale.

9 BY MR. KISSNER:

10 Q. But do you think that Enigma benefited
11 from the sale?

12 MR. MANN: Objection to form.

13 THE WITNESS: Yes.

14 BY MR. KISSNER:

15 Q. How did it benefit?

16 A. I believe --

17 MR. MANN: Objection to form.

18 THE WITNESS: I believe that Enigma
19 benefited because the sale was approved and they
20 will receive net proceeds for the collateral they
21 encumbered.

22 BY MR. KISSNER:

23 Q. Okay. Do you think that Enigma
24 benefited from the fees charged by Trangistics to
25 the estate?

1 MR. MANN: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. KISSNER:

4 Q. Okay.

5 A. To the extent -- well, just yes.

6 Q. That's fine. I can try another way.

7 When you prepared your surcharge
8 analysis was one of the things that you analyzed
9 whether Enigma benefited from the charges included
10 therein?

11 A. Yes, I believe it's implied in the
12 approval of the sale but also that the sale will
13 provide proceeds to Enigma.

14 Q. Right. I guess I might be asking
15 something a little different, which was presumably
16 when you prepared the surcharge analysis there were
17 certain things that you analyzed and considered,
18 correct?

19 A. Yes.

20 Q. Was one of the things that you
21 considered in preparing the surcharge analysis
22 whether the various secured lenders benefited from
23 the cost included in the surcharge analysis?

24 MR. MANN: Objection to form.

25 THE WITNESS: Yes.

1 BY MR. KISSNER:

2 Q. Okay. Did you analyze whether
3 Trangistics's fees benefited secured lenders?

4 MR. MANN: Objection to form.

5 THE WITNESS: I'm not sure I understand
6 your question. Can you rephrase it, please?

7 BY MR. KISSNER:

8 Q. Sure. So you said that you analyzed
9 certain items or issues or concepts when preparing
10 your surcharge analysis, correct?

11 A. Yes.

12 Q. And you said that one of those things
13 that you analyzed was whether a given cost provided
14 a benefit to the debtor's secured lenders, correct?

15 A. Yes.

16 Q. And the debtor's secured lenders, that
17 includes Enigma?

18 A. Yes.

19 Q. Okay. So was one of the things that you
20 analyzed when preparing the surcharge analysis
21 whether Enigma benefited from the costs included in
22 the analysis?

23 A. I believe that at least ratably Enigma
24 benefited as the sale will provide proceeds greater
25 than the costs of the storage.

1 Q. Right. But you're saying that here
2 today in this deposition.

3 I guess what I'm asking is did you
4 analyze that at the time that you prepared the
5 surcharge analysis?

6 MR. MANN: Objection to form.

7 THE WITNESS: I'm not sure I understand
8 the difference. Is your question whether or not it
9 was considered then?

10 BY MR. KISSNER:

11 Q. Yeah.

12 A. I believe that just based on these costs
13 being less than the surcharge or than the net
14 proceeds, yes.

15 Q. Right. I guess --

16 A. If there was a negative number, then it
17 would be very obvious.

18 Q. Well, to be clear I'm not asking you to
19 describe that benefit or sort of justify anything
20 here today. I guess I'm just trying to get at the
21 process that was employed in preparing the surcharge
22 analysis.

23 So all I want to know is did you
24 consider whether Enigma benefited from the costs
25 included in the surcharge analysis at the time that

1 you were preparing the surcharge analysis?

2 A. Yes, I considered it in my conversations
3 with counsel and Province.

4 Q. Okay. Great.

5 And did you consider whether Enigma
6 benefited from the fees charged by Trangistics?

7 MR. MANN: Objection to form.

8 THE WITNESS: Sorry, can you repeat your
9 question.

10 BY MR. KISSNER:

11 Q. Sure. So you said before that at the
12 time that you were preparing your surcharge analysis
13 you considered whether the costs in that analysis
14 benefited Enigma, right?

15 A. Yes.

16 Q. Okay. So as part of that, did you
17 consider whether the costs proposed to be charged by
18 Trangistics benefited Enigma?

19 MR. MANN: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. KISSNER:

22 Q. Do you think that Enigma benefited?

23 A. Yes.

24 MR. MANN: Objection to form.

25 BY MR. KISSNER:

1 Q. And how did Enigma benefit?

2 MR. MANN: Objection to form.

3 THE WITNESS: A sale that Enigma
4 approved was ordered by the court.

5 BY MR. KISSNER:

6 Q. And can you quantify the amount by which
7 Enigma benefited from Trangistics' fees?

8 MR. MANN: Objection to form.

9 THE WITNESS: Not sitting here right in
10 front of you.

11 BY MR. KISSNER:

12 Q. Did you ever attempt to quantify the
13 amount by which Enigma benefited from Trangistics'
14 fees?

15 MR. MANN: Objection to form.

16 THE WITNESS: Can you be more specific
17 in what you mean?

18 BY MR. KISSNER:

19 Q. Sure. I asked you whether you could
20 quantify the benefit that Enigma received from
21 Trangistics' fees, and you said sitting here right
22 now I can't, correct?

23 A. Yes, without a calculator or Excel open,
24 yeah.

25 Q. So I guess what I want to know is have

1 you at any point ever attempted to perform that
2 analysis, with a calculator or Excel or otherwise?

3 A. Through conversations. I don't believe
4 there's an official or draft document of those
5 benefits.

6 Q. Okay. And but just to be clear, and I'm
7 not trying to be difficult, I just want to make sure
8 the record's clear and that I have my story
9 straight.

10 You don't recall ever endeavoring to
11 quantify the benefit that Enigma received from
12 Trangistics' warehouse fees, correct?

13 A. I don't remember creating any
14 analysis -- tangible analysis that did that.

15 Q. Did you ever create an intangible
16 analysis?

17 A. We certainly discussed this surcharge
18 with counsel and Province.

19 Q. Okay. So before you referenced a
20 dispute between Trangistics and the debtor, correct?

21 A. Correct.

22 Q. Do you have a sense of what that dispute
23 was about just in broad strokes?

24 A. I'd have to defer to the lawyers on the
25 details of it, but my understanding is that it's

1 over Trangistics' pre-petition secured claim that
2 they filed.

3 Q. Are you aware of any other dispute
4 between the company and Trangistics?

5 A. I believe at one point, I had
6 conversations with the former CEO about the rate
7 that they had charged, but in our discussions with
8 them and review of the Deployment Logix invoices it
9 didn't appear to be out of market.

10 Q. Could you turn to page 24 of the
11 transcript in front of you that was marked as
12 Exhibit 14. And could you go right about the middle
13 of the page at line 15.

14 A. Yes.

15 Q. Where it says Ms. McPherson?

16 A. Yes.

17 Q. And Ms. McPherson, that's still debtor's
18 counsel, correct?

19 A. Yes.

20 Q. And could you turn to page 25 at the
21 bottom, line 21.

22 A. Yes.

23 Q. And could you read that first sentence?

24 A. So that -- our position is this is not
25 an actual and necessary expense and they have to

1 bear the burden of establishing that it is.

2 Q. And "this," you understand that to refer
3 to amounts invoiced by Trangistics to the debtor,
4 correct?

5 A. Without reading the rest of the document
6 that appears to be what they're talking about.

7 Q. Do you agree with Ms. McPherson that the
8 Trangistics charges were not an actual and necessary
9 expense?

10 MR. MANN: Object to the form.

11 THE WITNESS: I'm not sure that I
12 understand the full context of that statement that
13 she's making.

14 BY MR. KISSNER:

15 Q. Okay. Sure. So we could go back to
16 page 22 of the transcript. It's on line 8. It says
17 we understand that, as here, Trangistics is saying,
18 well we sent you invoices for 38,600, right?

19 A. Yes.

20 Q. And then on line 14, Ms. McPherson says,
21 and it's our understanding that the warehouse
22 actually charges significantly less, 30,500,
23 correct?

24 A. Yes.

25 Q. So does that refresh your recollection

1 as to whether there were any other disputes
2 regarding Trangistics' claims other than it's
3 pre-petition warehouse liens?

4 A. Yeah, based on this, yes.

5 Q. And what's that -- what's your
6 understanding?

7 A. Is that the warehouse actually charges
8 significantly less, of 30,500, relative to the
9 38,600.

10 Q. So the -- to make sure I have that
11 right, so what this is alleging is that the actual
12 warehouse -- that the actual warehouse charges
13 Trangistics 30,500, Trangistics charges the estate
14 38,600, and there's a dispute about that, fair?

15 A. Yes.

16 Q. And if we turn back then to page 25 of
17 the transcript, and on line 21, does that refresh
18 your recollection as to why Ms. McPherson might have
19 said that the Trangistics claim was not an actual
20 and necessary expense?

21 MR. MANN: Objection to form.

22 THE WITNESS: It looks like there was a
23 dispute about this, contingent on them proving that
24 they were actual and necessary expenses.

25 BY MR. KISSNER:

1 Q. Okay. And so if Trangistics charges the
2 estate \$38,600 a month for a storage space that only
3 costs \$30,500 a month, do you think that's an actual
4 and necessary expense?

5 MR. MANN: Objection to form.

6 THE WITNESS: I don't know that I can
7 opine on the margins that warehouse owners charge
8 their brokers.

9 BY MR. KISSNER:

10 Q. Okay. But if Trangistics was charging
11 the debtor more for the storage than what it was
12 actually worth, that wouldn't be necessary, right?

13 MR. MANN: Objection to form.

14 THE WITNESS: Coin Cloud is not a
15 warehouse broker so I don't know that that cost
16 wouldn't have been necessary, especially relative to
17 the Deployment Logix invoices.

18 BY MR. KISSNER:

19 Q. Okay. But if Trangistics was charging
20 the debtor more for storage than what it was
21 actually worth, that wouldn't be reasonable, right?

22 MR. MANN: Objection to form.

23 THE WITNESS: I think you have to
24 consider the circumstances of that situation fully,
25 but in the vacuum of what you just said, sure.

1 BY MR. KISSNER:

2 Q. Fair.

3 I'm going to do one brief set and then
4 we'll break in five to ten, if that's all right.

5 A. Sure.

6 Q. Okay. Could we turn back to Tab 3 which
7 was marked as Exhibit 2. If you could go to page 4
8 of your declaration.

9 A. Okay.

10 Q. I'm sorry it's not highlighted, but if
11 you go to paragraph 9, down to line 7 of this
12 declaration, and could you just read that sentence
13 there.

14 A. First, I am informed based on e-mail
15 communications with the representative of Stretto,
16 Inc. that the debtor's claims, noticing and
17 solicitation, Stretto, Inc. incurred approximately
18 27,500 in expenses associated with noticing and
19 servicing all sale-related documents.

20 Q. Okay. So does that mean then that
21 Stretto, Inc.'s fees or at least certain of them
22 were included in your surcharge analysis?

23 A. Yes, specifically as it relates to
24 noticing the sale.

25 Q. And who's Stretto, Inc.?

1 A. Stretto is the claims and noticing agent
2 on this bankruptcy.

3 Q. Okay. And who retained them?

4 A. I'd have to defer to legal on their
5 employment agreement, but I believe the debtor.

6 Q. Okay. And so this says that Stretto
7 incurred \$27,500 in sale and noticing-related
8 expenses?

9 A. Yes.

10 Q. Okay. Do you think that those fees were
11 necessary to the sale process?

12 MR. MANN: Objection to form.

13 THE WITNESS: I think I have to defer to
14 counsel on the noticing process. I'm certainly not
15 an expert on that.

16 BY MR. KISSNER:

17 Q. How did you determine that Stretto
18 incurred approximately \$27,500 in expenses
19 associated with noticing and servicing all
20 sale-related documents?

21 A. I relied on the information they gave me
22 when I asked for it.

23 Q. Okay. So why don't we go to Tab 26,
24 which I'd ask be marked as Exhibit 15.

25 (Exhibit 15 marked.)

1 BY MR. KISSNER:

2 Q. And do you recognize this document?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. This is an e-mail exchange between
6 myself and Angela Tsai.

7 Q. Who is Angela Tsai?

8 A. Director of corporate restructuring at
9 Stretto.

10 Q. And can you describe what this e-mail is
11 about?

12 A. Yes. It's me asking Angela to let me
13 know what the costs and expenses have been through
14 Stretto, associated with the noticing -- noticing
15 the sale process.

16 Q. Is this the e-mail that you relied upon
17 in determining that approximately \$27,500 of Stretto
18 fees were incurred in the sale and noticing-related
19 expenses?

20 A. Yes.

21 Q. Did you review any invoices from
22 Stretto?

23 A. No.

24 Q. When you were preparing the surcharge
25 analysis, you said before that one of the things you

1 analyzed was whether secured lenders benefited from
2 various costs included in the analysis, correct?

3 A. Yes.

4 Q. Okay. And included among those secured
5 lenders was Enigma, correct?

6 A. Yes.

7 Q. Did you analyze whether Enigma benefited
8 from the fees and expenses incurred by Stretto?

9 MR. MANN: Objection to form.

10 THE WITNESS: Yes.

11 BY MR. KISSNER:

12 Q. And what was the result of that
13 analysis? What did you conclude?

14 A. That the sale was successful and
15 approved.

16 Q. Sure. But did you conclude one way or
17 another whether Enigma benefited from Stretto's fees
18 and expenses?

19 MR. MANN: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. KISSNER:

22 Q. And what was that -- what was your
23 conclusion?

24 MR. MANN: Objection to form.

25 THE WITNESS: That they benefited from

1 the sale being approved.

2 BY MR. KISSNER:

3 Q. But did they benefit from Stretto's fees
4 and expenses?

5 MR. MANN: Objection to form.

6 THE WITNESS: If they were necessary to
7 the approval of the sale, yes.

8 BY MR. KISSNER:

9 Q. Did you ever attempt to quantify the
10 amount by which Enigma benefited from Stretto's fees
11 and expenses?

12 MR. MANN: Objection to form.

13 THE WITNESS: I believe I already
14 answered this question.

15 BY MR. KISSNER:

16 Q. Well, before we were talking about
17 Trangistics, now we're talking about Stretto, so.

18 Did you ever attempt to quantify the
19 amount by which Enigma benefited from Stretto's fees
20 and expenses?

21 MR. MANN: Objection to form.

22 THE WITNESS: I don't believe there was
23 a formal analysis done other than those that we've
24 discussed and maybe drafts of those.

25 BY MR. KISSNER:

1 Q. Now, do you recall did Enigma ever
2 direct the debtor to retain Stretto?

3 A. I don't believe Enigma objected to it,
4 but I do not know if Enigma instructed the debtor
5 to.

6 Q. Do you recall if Enigma ever instructed
7 the debtor -- strike that.

8 Do you recall if Enigma ever directed
9 the debtor to incur the \$27,500 of costs from
10 Stretto?

11 A. I don't know if the debtor was ever
12 directed by Enigma to do that, no.

13 Q. And do you think that Stretto's fees
14 were reasonable?

15 MR. MANN: Objection to form.

16 THE WITNESS: Yes.

17 BY MR. KISSNER:

18 Q. Why is that?

19 A. I don't believe I've seen any objections
20 to these fees, and they seem in line with what I've
21 seen in other noticing instances.

22 Q. What have you seen in other noticing
23 instances?

24 A. Costs generally, you know, based on the
25 creditor matrix, which I believe in this case --

1 counsel would have to correct me on the numbers --

2 possibly exceeding 10,000 noticing parties.

3 Q. Okay. And so you've given me some

4 reasons right now why you think these fees were

5 reasonable. Did you ever analyze whether these fees

6 were reasonable in preparing your surcharge

7 analysis?

8 A. Yes.

9 Q. Okay. And what was your conclusion?

10 A. That they were reasonable.

11 Q. Okay.

12 MR. KISSNER: I think we can go off the

13 record, take a break for lunch.

14 (A discussion is held off the record.)

15 MR. KISSNER: Back on the record.

16 Just a few things to get out of the way.

17 So first, I understand that counsel for AV Tech is

18 going to ask a couple of questions so we'll turn the

19 floor over to him in a second.

20 But one thing I was discussing with

21 Mr. James's counsel is stipulations regarding

22 objections. Just so that it's on the record we

23 agree that all objections, other than to the form of

24 the question, are not waived and are preserved.

25 And I think with that I can turn it over

1 to Mr. Higgins.

2 EXAMINATION

3 MR. HIGGINS: Thank you.

4 BY MR. HIGGINS:

5 Q. Good afternoon. Can you hear me?

6 A. Yes.

7 Q. Awesome. So I have about four questions
8 for you here. Hopefully I'll try and make this
9 pretty smooth.

10 So I want to turn you back to what is
11 marked as Tab 3, I believe, in your binder. That is
12 your declaration supporting the surcharge motion.

13 A. Sure.

14 Q. So as I read this, I understand that you
15 have broken out what you call storage costs and sale
16 costs; is that accurate?

17 A. Let me get to the exhibit. Is that what
18 you're referring to?

19 Q. Yes, for your analysis.

20 A. And you said broken out storage costs
21 and sale-related costs; is that right?

22 Q. That's correct, yes.

23 A. Yes, those are the two primary
24 categories.

25 Q. And now I'm looking at the pages,

1 page 9, it's part of, I believe, Exhibit A to your
2 declaration and -- I'm sorry, go ahead.

3 A. Yeah. I think I'm on the same page as
4 you.

5 Q. Perfect.

6 And we can agree that those storage
7 costs, the warehouse costs include costs from
8 Deployment Logix, Morningstar Storage and
9 Trangistics, right?

10 A. Yes.

11 Q. And those sale-related costs include
12 costs from Province and Stretto and then others
13 employed by the estate as well?

14 A. Yes.

15 Q. Okay. In your analysis, did you attempt
16 to quantify the precise benefits that any of those
17 entities conferred AVT specifically?

18 A. Can you clarify? What you mean?

19 Q. Sure. So during your analysis, did you
20 attempt to quantify -- we'll use Stretto as an
21 example here -- the precise dollar amount that
22 Stretto's involvement in this case conferred upon
23 AVT as a benefit?

24 A. There's no formal document or analysis
25 to show, but the approval of the sale provides --

1 Q. Understood. Sorry I cut you off. I
2 apologize.

3 A. That's okay.
4 Provides the benefit.

5 Q. Okay, so your analysis then is that AV
6 Tech's share of -- I believe you're talking
7 accelerated costs now, so the total DCMs under your
8 analysis, its share of the costs should be the same
9 portion?

10 A. As the others -- the other lenders
11 relative to the number of total kiosks sold.

12 Q. Okay. Let's talk about the auction,
13 then. Can I assume that you were involved in the
14 auction that was held on June 2nd?

15 MR. MANN: Objection. I think the
16 auction is going to be for Dan Moses tomorrow, what
17 went on with the auction.

18 MR. HIGGINS: I'm sorry, I couldn't hear
19 most of that.

20 MR. MANN: So we have Dan Moses tomorrow
21 and he's appearing to answer the questions regarding
22 the auction and what went on with the auction.

23 MR. HIGGINS: Understood.

24 I suppose I'm looking to ask questions
25 about what I believe is topic one, the sale and

1 marketing process. Would you allow that or is that
2 going to be still in your opinion off limits?

3 THE WITNESS: That's a topic for Dan.

4 MR. HIGGINS: Oh, okay. Well, with that
5 then, that's all I had to ask. Thank you.

6 EXAMINATION

7 MR. KISSNER: All right. Great. Are we
8 good to proceed then?

9 BY MR. KISSNER:

10 Q. And so before I get going, just wanted
11 to ask, during the lunch break, did you talk to
12 anybody else about the substance of your testimony
13 today?

14 A. Only counsel.

15 Q. Only counsel?

16 What did you guys talk about? Without
17 revealing anything privileged.

18 A. Where he's from -- it's the first time
19 I've met him -- and just general demeanor during the
20 deposition.

21 Q. Okay.

22 A. Oh, also, yeah, it was brought to my
23 attention that there are potentially 27,000 noticing
24 parties as it relates to Stretto's sale and noticing
25 costs.

1 Q. Understood. Thank you.

2 All right. So let's turn back to your
3 surcharge declaration which was Tab 3 we marked as
4 Exhibit 2. And then we're going to go back to
5 page 4 of your declaration, to paragraph 9.

6 A. Okay.

7 Q. So the -- you testified earlier that the
8 debtor's -- or strike that.

9 You testified earlier that the surcharge
10 analysis includes professional fees, correct?

11 A. Yes.

12 Q. Does it include Fox Rothschild fees?

13 A. Yes.

14 Q. And about how many -- about how much in
15 fees from Fox Rothschild are included in the
16 surcharge analysis?

17 A. I don't remember the exact number off
18 the top of my head.

19 Q. Could you read line 19 of page 4 of your
20 surcharge declaration --

21 A. Yes.

22 Q. -- beginning with the word "fifth"?

23 A. I am informed based on a review of
24 monthly fee statements, docket numbers 436, 575,
25 721, and 864, filed by counsel to the debtor, Fox

1 Rothschild, that Fox Rothschild incurred
2 approximately 406,000 in fees and expenses
3 associated with the sale process.

4 Q. Okay. Does that refresh your
5 recollection of how much of Fox Rothschild's fees
6 are included in the surcharge analysis?

7 A. Yes.

8 Q. And how much?

9 A. 406,857.

10 Q. And those fees, they all related to the
11 sale process, correct?

12 A. To my understanding, yes.

13 Q. How did -- how did you determine that?

14 A. Based on the category and the fee
15 statements and confirmation from counsel.

16 Q. Okay. Do you think that Enigma
17 benefited from those fees?

18 MR. MANN: Objection. Form.

19 THE WITNESS: Yes.

20 BY MR. KISSNER:

21 Q. Why?

22 A. Fox counsel to the debtor assisted in
23 the sale process that was ultimately approved.

24 Q. And when you were preparing the
25 surcharge analysis, did you undertake an analysis of

1 whether Enigma benefited from Fox Rothschild's fees
2 incurred in connection with the sale process?

3 MR. MANN: Objection. Form.

4 THE WITNESS: Yes.

5 BY MR. KISSNER:

6 Q. And what was your conclusion?

7 A. That the sale was approved and the
8 lenders will receive proceeds from the sale and that
9 those fees were necessary to doing so.

10 Q. Sitting here today, can you quantify the
11 amount by which Enigma benefited from Fox
12 Rothschild's fees incurred in connection with the
13 sale process?

14 MR. MANN: Objection. Form.

15 THE WITNESS: At least the amount of the
16 net proceeds.

17 BY MR. KISSNER:

18 Q. Did you attempt to quantify the amount
19 by which Enigma benefited in connection with
20 preparing the surcharge analysis?

21 MR. MANN: Objection. Form.

22 THE WITNESS: Sorry, can you clarify it.
23 I don't understand the difference between this
24 question and the last.

25 BY MR. KISSNER:

1 Q. Sure. So I was saying, sitting here
2 today, were you able to quantify the amount by which
3 Enigma benefited from certain fees, and you gave an
4 answer.

5 So what I'm trying to understand is if
6 you also attempted to quantify Enigma's benefit at
7 the time you were preparing your analysis?

8 MR. MANN: Objection. Form.

9 THE WITNESS: Yes.

10 BY MR. KISSNER:

11 Q. Okay. And what was your conclusion?

12 A. That Enigma's benefiting at least as
13 much as the net proceeds.

14 Q. Okay. Did -- sorry. Strike that.

15 To your knowledge, did Enigma ever
16 direct the debtor to retain Fox Rothschild?

17 A. I don't know that Enigma directed them,
18 but I don't believe they objected to the retention
19 or Fox Rothschild's fees at least at the time of
20 this analysis, excluding those that did not have
21 certificate of no objection at the time.

22 Q. Well, then, let's talk a little bit
23 about that retention.

24 Let's turn to Tab 15 which I'd ask the
25 reporter to mark as, I believe, Exhibit 16.

1 (Exhibit 16 marked.)

2 BY MR. KISSNER:

3 Q. Are you there?

4 A. Tab 15?

5 Q. Yeah.

6 A. Yes.

7 Q. What is this document? Sorry. Strike

8 that.

9 Are you familiar with this document?

10 A. I have at least seen it, yes.

11 Q. Can you describe what it is?

12 A. The final order authorizing retention

13 and employment of Fox Rothschild, LLP as debtor's

14 counsel effective as of the petition date.

15 Q. This is the order approving Fox

16 Rothschild's employment by Coin Cloud?

17 A. It appears so.

18 Q. Can you turn to page 3. And do you see

19 paragraph 2 at the top.

20 A. Yes.

21 Q. Can you please read it out loud?

22 A. Sure. Pursuant to 11 USC 328, Fox

23 Rothschild shall have a \$450,000 cap on its

24 compensation for services rendered in connection

25 with the debtor's first-day pleadings, attendance at

1 341 meeting of creditors, and any asset sale
2 process.

3 Q. Okay. Perfect.

4 So would it be fair too say that Fox
5 Rothschild's fees in this case were capped at
6 \$450,000 in total for first day pleadings,
7 attendance at the creditors' meetings, asset sales,
8 lease rejection and financing motions?

9 MR. MANN: Objection to form.

10 THE WITNESS: I believe that's a
11 question for counsel.

12 MR. KISSNER: Okay. But can you read
13 back his prior answer, please, into the record.

14 THE REPORTER: He read the record.

15 MR. KISSNER: Okay.

16 BY MR. KISSNER:

17 Q. So would you agree at least that this
18 order says that there's a \$450,000 cap on services
19 rendered in connection with first day pleadings,
20 attendance at creditors' meetings, asset sales,
21 lease rejections and financing motion?

22 A. I believe this -- context of the rest of
23 the document and maybe other filings that I'm
24 unaware of, that this says Fox Rothschild shall have
25 a \$450,000 cap on its compensation for services

1 rendered in connection with the debtor's first-day
2 pleadings, attendance at 341 meeting of creditors,
3 and any asset sale process, lease rejection and
4 financing motions.

5 Q. Okay. Could you turn to Tab 35 in your
6 binder, which I'd ask the court reporter to mark as
7 Exhibit 17, and let me know when you're there.

8 (Exhibit 17 marked.)

9 THE WITNESS: I'm there.

10 BY MR. KISSNER:

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. What is it?

14 A. This is Fox Rothschild, LLP's monthly
15 fee statement of services rendered and expenses
16 incurred for the period from February 7, 2023,
17 through March 31st, 2023.

18 Q. And could we go to Tab 36 in your
19 binder, which I'd ask the court reporter to mark as
20 Exhibit 18.

21 (Exhibit 18 marked.)

22 BY MR. KISSNER:

23 Q. Do you recognize this document?

24 A. Yes. I'm not sure that I reviewed it
25 but I recognize what it is, yes.

1 Q. Could you tell me what it is?

2 A. Fox Rothschild, LLP's monthly fee
3 statement of services rendered and expenses incurred
4 from the period June 1st, 2023, through June 30th,
5 2023.

6 Q. Okay. Let's go back to Tab 35 which was
7 Exhibit 17, then.

8 You said this was or appears to be Fox
9 Rothschild's fee statement for March and then the
10 stub period of February, correct?

11 A. Yes.

12 Q. And could we go to page 6. I thought
13 they were Bate stamps on these. I apologize.

14 But it's Exhibit B, task code summary.
15 Do you see that?

16 A. Yes.

17 Q. And if you go down a few lines, do you
18 see where it says cash collateral/DIP financing?

19 A. Yes.

20 Q. And if you go over, do you see a dollar
21 amount there?

22 A. Yes.

23 Q. Can you read to me what that is?

24 A. \$101,938.50.

25 Q. Do you understand that to mean that Fox

1 Rothschild incurred \$101,938.50 in connection with
2 cash collateral and DIP financing during February
3 and March 2023?

4 A. Yes.

5 Q. And if we could go down a couple more
6 lines to lease/executory contract issues, do you see
7 that?

8 A. Yes.

9 Q. If you go over to the dollar amount
10 listed and read that for me, please.

11 A. \$128,373.

12 Q. Okay. So do you understand this to mean
13 that Fox Rothschild incurred \$128,373 in connection
14 with lease and executory contract issues during
15 February and March 2023?

16 A. Yes.

17 Q. Okay. And then could you go down closer
18 to the bottom to where it says use, sale or lease of
19 property?

20 A. Yes.

21 Q. And if you see a dollar amount listed
22 there, could you read that to me?

23 A. \$41,871.50.

24 Q. And do you understand that to mean that
25 Fox Rothschild incurred \$41,000 -- strike that.

1 Do you understand that to mean that Fox
2 Rothschild incurred \$41,871.50 in connection with
3 the use, sale or lease of property in the months of
4 February and March of 2023?

5 MR. MANN: Objection. Form.

6 THE WITNESS: Yes.

7 BY MR. KISSNER:

8 Q. Do you have any sense of what those
9 dollar amounts add up to?

10 A. Not without doing the math.

11 Q. Okay. If I told you they added up to
12 about \$272,000, would that sound right?

13 A. Roughly, yes.

14 Q. And if we could go to Tab 36 which was
15 marked as Exhibit 18 -- and this one also doesn't
16 have a Bate stamp so I apologize -- but you said
17 that this appeared to be Fox Rothschild's invoice
18 for the period of June 2023, correct?

19 A. Yes.

20 Q. Could you then turn to page 6 of this
21 which is Exhibit B, task code summary.

22 A. Okay.

23 Q. And if you could go down a few lines to
24 where it says cash collateral/DIP financing.

25 A. Yes.

1 Q. Do you see a dollar amount there?

2 A. \$5,989.

3 Q. And do you understand this to mean that
4 Fox Rothschild incurred \$5,989 of fees in connection
5 with cash collateral and DIP financing issues during
6 June 2023?

7 A. That makes sense.

8 Q. And can you go down a bit to
9 lease/executory contract issues, do you see that?

10 A. Yes.

11 Q. And could you read the dollar amount
12 there?

13 A. \$51,326.50.

14 Q. And do you understand this to mean that
15 Fox Rothschild incurred \$51,326.50 in connection
16 with lease and executory contract issues during the
17 month of June 2023?

18 A. That makes sense.

19 Q. Okay. And one more.

20 Could you go down, second to last line
21 where it says use, sale or lease of property. Do
22 you see that?

23 A. Yes.

24 Q. And can you read the dollar amount
25 listed there?

1 A. \$187,750.50.

2 Q. Do you understand that to mean that Fox
3 Rothschild incurred \$187,750.50 in fees in
4 connection with use, sale or lease of property
5 during June 2023?

6 A. That makes sense.

7 Q. Okay. And would you happen to know what
8 these dollar amounts add up to?

9 A. Not without doing the math.

10 Q. If I told you that they added up to
11 approximately \$245,000, would that sound more or
12 less right?

13 A. I'll take your word for it.

14 Q. Okay. And before we said for Tab 35
15 those dollar amounts added up to roughly \$272,000,
16 right?

17 A. That sounds right.

18 Q. Okay. And 245,000 plus 272,000, do you
19 know how much that is?

20 A. Not without doing the math.

21 Q. Do you think it's more or less than
22 \$450,000?

23 A. I'd prefer not to guess.

24 Q. Okay. If I were to tell you that those
25 two numbers added up to \$517,000, would that sound

1 right?

2 A. I'd take your word for it.

3 Q. Is \$517,000 more or less than \$450,000?

4 A. More.

5 Q. Would it be fair -- sorry. Strike that.

6 Do you know if Fox Rothschild incurred
7 any fees relating to the sale other than those
8 reflected in the invoices marked as Exhibits 17 and
9 18?

10 A. I believe so, but I would have to check
11 with them. Otherwise, I'd be guessing. But I
12 believe there were, yes.

13 Q. Okay. Would you agree that all of the
14 categories of fees that we've just been walking
15 through, use, sale or lease of property, executory
16 contract issues, DIP financing, that those are all
17 listed in Fox Rothschild's retention order as being
18 subject to a cap?

19 MR. MANN: Objection. Form.

20 THE WITNESS: I'd have to defer to
21 counsel, but it makes sense.

22 BY MR. KISSNER:

23 Q. So I guess my only question is do you
24 think it would be reasonable to surcharge Enigma for
25 fees that were incurred in excess of a court

1 mandated cap?

2 MR. MANN: Objection. Form.

3 THE WITNESS: I don't know that I can

4 opine on the legality of what Fox Rothschild is

5 charging. I'd have to rely on them for that

6 opinion.

7 BY MR. KISSNER:

8 Q. Okay. Let's go back to your declaration

9 which is Tab 2 -- or sorry -- Tab 3, Exhibit 2. And

10 once you're there we can go to the same place we

11 have been, which is page 4, paragraph 9.

12 A. Okay.

13 Q. Sorry. Before we do that, just one

14 other question about Fox Rothschild.

15 Who do they represent in the case?

16 A. The debtor.

17 Q. They represent the debtor, okay.

18 So your surcharge analysis, we discussed

19 how it includes certain professional fees, right?

20 A. Correct.

21 Q. And those professional fees include some

22 fees for Seward & Kissel, correct?

23 A. I believe so, yes.

24 Q. Do you know what Seward & Kissel is?

25 A. Counsel to the committee of unsecured

1 creditors.

2 Q. They're a law firm?

3 A. Yes.

4 Q. And --

5 A. To my knowledge, yes.

6 Q. And so your surcharge analysis, it

7 includes fees for Seward & Kissel, right?

8 A. Correct.

9 Q. And how much of their fees was included

10 in the surcharge analysis?

11 A. It says here approximately \$248,000 --

12 sorry -- \$248,015 in fees and expenses associated

13 with the sale.

14 Q. And how did you determine -- sorry.

15 Strike that.

16 How did you determine whether these fees

17 were associated with the sale?

18 A. I relied on a representative from Seward

19 & Kissel to indicate those fees to me.

20 Q. Okay. Why don't we move over to Tab 28,

21 then which we'll mark as 19.

22 (Exhibit 19 marked.)

23 BY MR. KISSNER:

24 Q. Do you recognize this document?

25 A. Yes.

1 Q. What is it?

2 A. This is an e-mail chain between a
3 representative of Seward & Kissel, myself and
4 several other estate professionals.

5 Q. And this e-mail, it contains an estimate
6 of Seward & Kissel's fees associated with the sales
7 process?

8 A. Yes. It says here, "S&K's estimated
9 fees related to the sale process are \$248,015 for
10 the case."

11 Q. Okay. And before, when you said that in
12 making your determination that certain fees were
13 associated with the sale process, you said that you
14 relied on an estimate. Is this the estimate to
15 which you were referring before?

16 A. Yes, I believe so.

17 Q. Okay. Did you review anything else to
18 make the determination of what these fees related
19 to?

20 A. I don't believe so for this particular
21 instance.

22 Q. Did you review any invoices of Seward &
23 Kissel?

24 A. I don't believe so for this particular
25 instance.

1 Q. Did you ever analyze whether Enigma
2 benefited from the fees incurred by Seward & Kissel?

3 A. Yes.

4 Q. And what was the conclusion that you
5 reached?

6 A. That Enigma benefited from the sale at
7 least in the amount of the net proceeds which were
8 only achievable with the fees that had been
9 incurred.

10 Q. So you said before that Seward & Kissel
11 is counsel to the creditors' committee, right?

12 A. Yes.

13 Q. What role did Seward & Kissel play in
14 selling the debtor's assets? Sorry -- strike that.

15 Did Seward & Kissel play a role in
16 selling the debtor's assets?

17 MR. MANN: Objection. Since that's
18 relating to more of like the sale of it, that would
19 be a question to Dan Moses.

20 MR. KISSNER: Yeah, but I think we're
21 just trying to establish the inputs from the
22 surcharge analysis. I'm not going to -- you can
23 have -- this isn't going to be a side show about the
24 sale because we have seven hours on that tomorrow.
25 I'm just trying to get at the process for billing

1 out the surcharge analysis, so.

2 Could you read my last question back?

3 (The record is read by the reporter.)

4 THE WITNESS: Can you clarify or specify
5 what you mean by that?

6 BY MR. KISSNER:

7 Q. Well, sure. So you said that -- you
8 testified earlier that Enigma received a benefit
9 from the sale of assets, right?

10 A. Yes.

11 Q. And you said that these fees were -- I
12 don't know the word you used -- strike that.

13 Is it true that you determined that
14 these fees were necessary to the sale?

15 A. Yes.

16 Q. Okay. So then what role, to your
17 knowledge, did Seward & Kissel play in selling the
18 debtor's assets?

19 MR. MANN: Objection to form.

20 THE WITNESS: The creditor's committee
21 counsel was at the very least a consultation party
22 to the sale among other things.

23 BY MR. KISSNER:

24 Q. Okay. And so you analyzed, in preparing
25 your surcharge analysis, whether Enigma benefited

1 from Seward & Kissel's fees, correct?

2 A. Yes.

3 MR. MANN: Objection to form.

4 BY MR. KISSNER:

5 Q. And your conclusion is that they did
6 achieve a benefit?

7 MR. MANN: Objection to form.

8 THE WITNESS: Yes.

9 BY MR. KISSNER:

10 Q. Did you attempt to quantify the amount
11 by which Enigma benefited from Seward & Kissel's
12 fee?

13 MR. MANN: Objection to form.

14 THE WITNESS: At least the amount of the
15 net proceeds.

16 BY MR. KISSNER:

17 Q. Did Enigma direct -- to your knowledge,
18 did Enigma direct the appointment of a creditor's
19 committee in this case?

20 A. I believe Enigma consented to the
21 bankruptcy and -- maybe indirectly, but I don't know
22 that Enigma directly instructed the estate to
23 appoint a creditors' committee.

24 Q. To your knowledge, did Enigma direct
25 the -- sorry. Strike that.

1 To your knowledge, is Enigma a member of
2 the creditors' committee?

3 A. Not to my knowledge.

4 Q. To your knowledge, did Enigma direct the
5 creditor's committee to retain Seward & Kissel?

6 A. Not to my knowledge, but I don't believe
7 that Enigma objected to it.

8 Q. Okay. And so you've determined that
9 \$248,015 incurred by Seward & Kissel related to the
10 sales process, right?

11 A. Yes.

12 Q. Do you think that those fees were
13 reasonable?

14 A. Yes.

15 MR. MANN: Objection to form.

16 BY MR. KISSNER:

17 Q. Why?

18 A. Their fees were reasonable in that they
19 played a part in the approval of the sale
20 ultimately.

21 Q. Okay.

22 A. Among other things.

23 Q. Sure. What were some of those other
24 things?

25 A. To my knowledge, Seward & Kissel at the

1 very least provided feedback of the sale process
2 along the way. That's my answer.

3 Q. You said before that your practice area
4 that you specialize in is corporate restructuring,
5 right?

6 A. Yes.

7 Q. About how many bankruptcies have you
8 been involved with?

9 A. Around ten.

10 Q. Around ten. Have each of those been in
11 court bankruptcies Chapter 11 or Chapter 7s?

12 A. Yeah, I believe at least most of them
13 have.

14 Q. Okay have you ever been retained in
15 connection with a Chapter 7 bankruptcy?

16 A. No, not that I remember.

17 Q. So but you have been retained in other
18 Chapter 11 bankruptcies?

19 MR. MANN: Objection. Form.

20 THE WITNESS: I have worked on other
21 bankruptcies as an employee of Province, yes.

22 BY MR. KISSNER:

23 Q. Fair. I'm -- that's fair. Do you
24 recall if in all those bankruptcies a creditors
25 committee was appointed?

1 A. Yes.

2 Q. Okay. Fair enough. Let's go back to
3 your declaration which was Tab 3, Exhibit 2 and
4 we're going to go right back to that page we've been
5 on which is page 4 and we're in paragraph 9, that
6 big paragraph that takes up the whole page.

7 A. Okay.

8 Q. So your surcharge analysis it includes
9 fees incurred by FTI; is that correct?

10 A. Yes.

11 Q. And when I say FTI, you understand that
12 I'm referring to FTI Consulting, Inc.?

13 A. Yes.

14 Q. What is FTI, do you know?

15 A. On this case FTI is the financial
16 advisor to the committee of unsecured creditors.

17 Q. So FTI was retained by the committee?

18 A. Yes.

19 Q. Not by the debtor?

20 A. Correct.

21 Q. Do you know how much -- sorry. Strike
22 that.

23 You said that FTI's fees are included in
24 the surcharge analysis, correct?

25 A. Yes.

1 Q. How much?

2 A. It says here approximately \$142,003.44.

3 Q. Do you have any reason to doubt the
4 accuracy of that?

5 A. No.

6 Q. And in broad strokes can you say what
7 the purpose of those fees were, if you can?

8 A. Well, these particular fees were
9 associated with the sale process.

10 Q. And how did you determine they're
11 associated with the sale process?

12 A. I'm informed based on the review of
13 monthly fee statements -- sorry. I believe I looked
14 at the wrong area.

15 I'm informed based on e-mail
16 communications with a representative of the
17 financial advisor -- well, of the Official Committee
18 of Unsecured Creditors.

19 Q. Well, then let's turn to Tab 27 in your
20 binder which I'd ask be marked as 20.

21 (Exhibit 20 marked.)

22 BY MR. KISSNER:

23 Q. Let me know when you're there.

24 A. I'm there.

25 Q. Do you recognize this document?

1 A. Yes.

2 Q. What is it?

3 A. This is an e-mail from Michael Tucker to
4 me with Rich Halevy cc'd.

5 Q. Anything else?

6 A. On the -- FTI's sale activity for the
7 50(c)(3) claim, which maybe is a typo.

8 Q. Do you understand that to refer to
9 surcharge?

10 A. Yes.

11 Q. And you testified that your
12 determination that \$142,003.44 of FTI fees and
13 expenses, that that was based off of e-mail
14 communications with a representative of FTI,
15 correct?

16 A. Yes, as is shown here.

17 Q. So this Exhibit 20 is the e-mail that
18 you're referring to?

19 A. Yes.

20 Q. Did you ever analyze any invoices of
21 FTI?

22 A. No.

23 Q. Do you know if FTI has filed any fee
24 applications in this case?

25 A. I don't know.

1 Q. And I know you said you didn't review
2 them, but did FTI send you any invoices while you
3 were preparing the surcharge analysis?

4 A. At this time of this e-mail I don't
5 believe so.

6 Q. Okay. So FTI it appeared incurred about
7 \$142,000 of sale-related fees. Did Enigma benefit
8 from those fees?

9 MR. MANN: Objection. Form.

10 THE WITNESS: Yes.

11 BY MR. KISSNER:

12 Q. How so?

13 A. Enigma will receive at least the net
14 proceeds from the sale.

15 Q. And when you were preparing your
16 surcharge analysis did you undertake an analysis of
17 whether Enigma benefited from FTI's fees?

18 MR. MANN: Objection. Form.

19 THE WITNESS: Yes.

20 BY MR. KISSNER:

21 Q. And what was your conclusion?

22 A. That Enigma will benefit at least the
23 amount of the net proceeds and likely also benefited
24 from any accretive value that DC's resulted in
25 during the sale process.

1 Q. And did you attempt to quantify the
2 amount by which Enigma benefited from FTI's fee?

3 MR. MANN: Objection. Form.

4 THE WITNESS: There was no formal
5 analysis tangible to review.

6 BY MR. KISSNER:

7 Q. And you didn't conduct your own?

8 A. I conducted my own review through
9 conversations with counsel.

10 Q. Counsel to the debtor?

11 A. Yes.

12 Q. Did Province work -- sorry. Strike
13 that.

14 In the course of Province's work on this
15 case, are you aware did it ever collaborate or work
16 together with FTI on anything?

17 A. Yes.

18 Q. In what capacity? On what?

19 A. FTI's a -- and the committee is a
20 consultation party so we correspond with them on
21 various important matters, and have throughout the
22 case.

23 Q. Do you think you collaborated with
24 them -- sorry. Strike that.

25 Do you recall collaborating with FTI in

1 preparation of the surcharge analysis?

2 A. We certainly corresponded about it, yes.

3 Q. What were the substance of those

4 communications, if you can recall?

5 A. Feedback on amounts for professional
6 fees as we've reviewed. The legitimacy or viability
7 of costs. And off the top of my head, the rest I
8 don't remember. Is there something else you can
9 show me that you're referring to?

10 Q. Not necessarily. Let's stick with what
11 you said.

12 So can you read back the first portion
13 of his answer, please?

14 (The record is read by the reporter.)

15 BY MR. KISSNER:

16 Q. Do you recall the substance of that
17 feedback on amount of professional fees were?

18 A. The amounts of the professional fees
19 themselves.

20 Q. Okay. And did you have a disagreement
21 as to the amount of professional fees due or was it
22 some other issue?

23 A. No, I don't think there was any
24 disagreement over the fees.

25 Q. And sorry, going back to the earlier

1 answer, could you read the next portion of it?

2 (The record is read by the reporter.)

3 BY MR. KISSNER:

4 Q. Can you elaborate on what the feedback
5 you received from FTI was on the legitimacy or
6 viability of costs?

7 A. Sure. For example, at one point there
8 was a thought of unencumbered assets as an
9 adjustment, and I believe FTI noted that that was
10 not an appropriate adjustment and it was removed
11 from the draft.

12 Q. Can you explain what an adjustment for
13 unencumbered assets means?

14 A. Sure. It was a hypothetical placeholder
15 for whether or not some of the proceeds were
16 allocable to unencumbered assets, which in this case
17 there were not.

18 Q. And was it FTI that was advocating for
19 the allocation of certain proceeds to unencumbered
20 assets or vice versa?

21 A. I believe FTI noted it should be
22 removed.

23 Q. Do you recall what the reasoning was?

24 A. I don't.

25 Q. So just to make sure I'm understanding

1 correctly, there was an earlier draft of your
2 surcharge analysis in which a certain percentage of
3 proceeds were being allocated to unencumbered
4 assets?

5 A. Maybe at one point but it was simply a
6 placeholder.

7 Q. Now was it proceeds being allocated or
8 costs being allocated to unencumbered?

9 A. I believe it was proceeds, but it
10 ultimately wasn't relevant to the final product.

11 Q. Okay. But under this current draft --
12 sorry, just help me understand. And I'm not being
13 purposely dense, I understand that we're talking
14 about an abstract document. So this surcharge
15 analysis -- let's turn back to the surcharge
16 analysis.

17 Why don't we go to Tab 3 which was
18 Exhibit 2. And we can go to Exhibit A to your
19 surcharge analysis which has the two charts. And if
20 we can go to the second chart on page 9 of 11.

21 Are you there?

22 A. Yes.

23 Q. And so we talked earlier about how more
24 or less this is a summary of charges -- sorry.
25 Strike that.

1 We talked earlier about how this was
2 more or less a summary of costs to be surcharged
3 right?

4 A. Yes.

5 Q. And that this chart allocates or
6 proposes to allocate rather those costs to the
7 various secured lenders, correct?

8 A. I believe though it does allocate costs
9 to certain lenders subject to material changes noted
10 on top and the purpose is ultimately to account for
11 the costs to be surcharged.

12 Q. Understood.

13 But I guess what I'm getting at is
14 there's a total amount of warehouse costs that's
15 \$518,000, right?

16 A. Correct.

17 Q. And then there's a total other
18 sale-related costs of \$1.58 million more or less,
19 right?

20 A. Correct.

21 Q. And so this chart -- granted it might be
22 preliminary and subject to change, but this chart
23 sets forth a proposal for how that \$518,000 and
24 \$1.58 million would be allocated among the three
25 secured parties, correct?

1 A. At this time, yes.

2 Q. And this chart allocates costs among
3 three different parties, correct?

4 A. Correct.

5 Q. And one of those is Enigma?

6 A. Correct.

7 Q. The other one is Genesis?

8 A. Correct.

9 Q. And the other one is AV Tech, correct?

10 A. Correct.

11 Q. And it was a draft of this chart on
12 which FTI provided you comments or something else?

13 A. A much earlier version similar to the
14 drafts that we referenced earlier today.

15 Q. And so we just talked about how this
16 chart allocates costs to three different parties,
17 right?

18 A. Correct.

19 Q. Am I given to understand then that in a
20 prior iteration, this chart allocated costs to more
21 than three parties?

22 MR. MANN: Objection. Form.

23 THE WITNESS: I want to clarify, in a
24 previous and prior draft that was ultimately not
25 used or final work product.

1 BY MR. KISSNER:

2 Q. But in that previous prior draft that
3 was not used or did not become final work product,
4 the allocation of costs was to more than three
5 entities or categories, correct?

6 A. I don't believe that that's correct.

7 Q. You don't believe that's correct?

8 A. That does not sound correct to me.

9 Q. Okay. Well, try and help me understand,
10 then.

11 So you said there was a prior iteration
12 of this chart, right?

13 A. There was a working draft, correct.

14 Q. Okay. And that working draft
15 presumably, you sent it to FTI to solicit comment on
16 it?

17 A. I don't recall if it was sent to FTI.

18 Yeah.

19 Q. But FTI provided you with feedback on
20 the analysis, right?

21 A. I at the very least know that that
22 particular topic was discussed.

23 Q. Okay. And one of the items of feedback
24 that they provided was on, I believe you said the
25 viability of certain costs, right?

1 A. Correct.

2 Q. And when I asked you about that, you
3 said that there had originally been included an
4 allocation to unencumbered assets that FTI thought
5 should be removed; is that accurate?

6 A. In a prior draft, not the 50(c) --
7 506(c) surcharge in front of us.

8 Q. Okay.

9 A. Which included things outside of this
10 particular analysis.

11 Q. Okay. So under that prior draft, there
12 was an allocation of certain of these costs to
13 Enigma, right?

14 A. I believe it was just a reduction of
15 gross proceeds, but ultimately wasn't true.

16 Q. Right. But I'm just sort of getting --
17 because again we're talking about a document that's
18 not in front of either of us, so I'm trying to paint
19 a picture of what this document looked like.

20 So in there there was a line that
21 presumably said reduction to Enigma proceeds for
22 warehouse costs, or something similar?

23 A. No.

24 Q. There wasn't?

25 A. No, not to Enigma.

1 Q. So the prior draft of this did not
2 allocate any costs to Enigma?

3 A. No, that's not what I said.

4 MR. MANN: Objection. Form.

5 THE WITNESS: The cost wasn't
6 specifically allocated to Enigma. It was just an
7 adjustment to gross proceeds as a placeholder and
8 not part of this 506(c) analysis. It was part of a
9 sale analysis that wasn't filed or a final work
10 product.

11 BY MR. KISSNER:

12 Q. Got it. I think I am now --

13 A. Simply just giving feedback or an
14 example of feedback the committee provided along the
15 way to developing this analysis (indicating) which
16 did not include the adjustment for unencumbered
17 assets.

18 Q. Okay. I --

19 A. Said differently, it would be a benefit
20 to Enigma that it was removed.

21 Q. Correct. We're on the same page there.
22 If I can attempt to recap, and you can tell me if
23 I'm wrong.

24 But at some point there was a draft
25 iteration of the surcharge analysis that was not a

1 final product that was subject to revision and did
2 in fact undergo revision that allocated some portion
3 of costs to unencumbered assets?

4 A. Not allocated costs, it was an
5 adjustment to gross proceeds.

6 Q. Okay. And what does that mean? Just
7 help me understand.

8 A. Instead of 4.2 million, for example, if
9 the allocation was 100,000 it would be 4.1 million
10 of proceeds which would then be surcharged.

11 Q. Do you have an understanding as to why
12 FTI wanted that removed?

13 A. Because to my understanding the
14 reasoning would be maybe there's a blanket lien from
15 Genesis, therefore no unencumbered assets were sold
16 in that particular sale. But again question for
17 counsel.

18 Q. Okay. Understood. That's very helpful.

19 And could you just turn to Tab 33 which
20 I think we can mark as Exhibit 21.

21 (Exhibit 21 marked.)

22 BY MR. KISSNER:

23 Q. Do you understand this document?

24 A. The e-mail correspondence with Michael
25 Tucker, is that what you're referring to? I just

1 want to make sure I'm on the right --

2 Q. Yep.

3 A. Yes, I do.

4 Q. Can you describe what it is?

5 A. It's an e-mail from Michael Tucker to me
6 and two other estate professionals which says please
7 send what you plan to submit today which is the due
8 date. I would like to see the schedule ASAP given
9 it is due today. Thanks.

10 Q. And the schedule, what do you understand
11 the schedule to refer to?

12 A. I believe it was the document that
13 Enigma received that day which had adjustments
14 beyond my understanding of the 506(c) adjustments
15 are including adequate protection adjustments which
16 have I believe since been removed.

17 Q. Okay. And we've looked at that, right.
18 Sorry for talking out loud.

19 Do you recall making any changes to your
20 surcharge analysis after sharing a copy with FTI on
21 July 10th?

22 A. I don't remember.

23 Q. Just one more and then we can stop
24 looking at invoices how about that.

25 Why don't we go to -- sorry. Let's stay

1 where we are.

2 You said before CKDL Credit, their the

3 DIP lender in this case?

4 A. Yes.

5 Q. Did your surcharge analysis include any

6 fees charged by CKDL?

7 A. No, not that I'm aware of.

8 Q. So can we go to Tab 17 which we'll mark

9 as 22.

10 (Exhibit 22 marked.)

11 BY MR. KISSNER:

12 Q. Let me know when you're there.

13 A. I'm there.

14 Q. Do you recognize this document?

15 A. Yes.

16 Q. Can you tell me what it is?

17 A. This is an invoice from -- hopefully I
18 pronounce this correctly -- Berger Singerman.

19 Q. Was this invoice included in the
20 surcharge analysis?

21 A. No.

22 Q. Go to Tab 18 which we'll mark as 23.

23 (Exhibit 23 marked.)

24 THE WITNESS: I'm there.

25 BY MR. KISSNER:

1 Q. Do you recognize this document?

2 A. Sorry, to clarify you said 18, correct?

3 Q. Yes.

4 A. This appears to be an invoice from
5 Sylvester Polednak.

6 Q. Go ahead.

7 A. That's all.

8 Q. Do you know who Sylvester & Polednak?

9 A. DIP agent attorneys.

10 Q. So they're counsel to CKDL as DIP
11 lender?

12 A. I believe local counsel.

13 Q. And was this invoice included in your
14 surcharge analysis?

15 A. No.

16 Q. Okay great. Go to Tab 19 which we'll
17 mark as 24.

18 (Exhibit 24 marked.)

19 BY MR. KISSNER:

20 Q. Do you recognize this document?

21 A. Yes.

22 Q. Can you tell me what it is?

23 A. It's an invoice from CKDL Credit billed
24 to Coin Cloud.

25 Q. Was this invoice included in the

1 surcharge analysis?

2 A. No.

3 Q. And then Tab 20 which we'll mark as

4 Exhibit 25.

5 (Exhibit 25 marked.)

6 BY MR. KISSNER:

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. Can you tell me what it is?

10 A. This is an invoice from Berger

11 Singerman.

12 Q. And was this included in your surcharge

13 analysis?

14 A. No.

15 Q. Three more. Tab 21, we'll mark this as

16 Exhibit 26.

17 (Exhibit 26 marked.)

18 BY MR. KISSNER:

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. Can you tell me what it is?

22 A. This is an invoice from NCC Group.

23 Q. And was this included in your surcharge

24 analysis?

25 A. No.

1 Q. Go to Tab 22 and we'll mark this as
2 Exhibit 27.

3 (Exhibit 27 marked.)

4 BY MR. KISSNER:

5 Q. Do you recognize this?

6 A. Yes.

7 Q. What is it?

8 A. This is an invoice from 507 Capital who
9 is I believe financial advisor to the DIP lender.

10 Q. Was this included in your surcharge
11 analysis?

12 A. No.

13 Q. And then finally Tab 23, which we'll
14 mark as Exhibit 28.

15 (Exhibit 28 marked.)

16 BY MR. KISSNER:

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. Can you tell me what it is?

20 A. This is an invoice from 507 Capital,
21 financial advisor to the DIP lender.

22 Q. And was this included in your surcharge
23 analysis?

24 A. No.

25 Q. Okay. Is there a reason why the DIP

1 lender's fees were not included in your surcharge
2 analysis?

3 A. I don't believe they provided accretive
4 value to the sale process and, in fact, I think they
5 were an interested party -- I guess I'd leave it up
6 to counsel -- but therefore not appropriate to
7 include.

8 Q. Was the DIP lender a consultation party
9 in connection with the sale, do you recall?

10 A. I believe they were a consultation
11 party. I don't know that they were a consultation
12 party to the sale, given their potential conflict.

13 Q. Okay. That's fair.

14 We'll shift gears again, and let's go to
15 Tab 32 which I'll ask to be marked as Exhibit 29.

16 (Exhibit 29 marked.)

17 BY MR. KISSNER:

18 Q. Okay. Do you recognize this document?

19 A. Yes.

20 Q. What is it?

21 A. This is a preliminary wind down analysis
22 of the estate post set.

23 Q. Did you prepare this preliminary wind
24 down analysis?

25 A. Physically, yes, with feedback from

1 other debtor professionals.

2 Q. And who are those debtor professionals?

3 A. Fox Rothschild and Province.

4 Q. Do you know when this was prepared?

5 A. Off the top of my head I do not know the
6 date this was prepared.

7 Q. Can we flip back to Tab 31 which I'll
8 ask be marked as Exhibit 30.

9 (Exhibit 30 marked.)

10 BY MR. KISSNER:

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. What is it?

14 A. This is an e-mail exchange between
15 myself and FTI with, looks like, Fox cc'd as well.

16 Q. Can you read the first sentence of your
17 e-mail after "hi Michael"?

18 A. Sure. Attached is an updated wind down
19 budget as we have discussed. Sorry.

20 Q. No, that's fine.

21 What do you understand "updated wind
22 down budget" to refer to?

23 A. A newer version than the previous
24 iteration that we had provided them.

25 Q. Do you think that the updated wind down

1 budget is Exhibit 29, Tab 32, which we just looked
2 at?

3 A. I believe so, yes.

4 Q. Okay. And can you -- looking at
5 Exhibit 30, Tab 31, can you read the date of your
6 e-mail?

7 A. Sure. July 18th, 2023.

8 Q. Does that refresh your recollection as
9 to when the updated wind -- strike that. Does
10 that -- strike that.

11 Does that refresh your recollection of
12 when the preliminary wind down analysis marked as
13 Exhibit 29 was prepared?

14 A. Yes. It makes sense that this was also
15 provided on July 18th.

16 Q. Is everything in this document true and
17 accurate to the best of your knowledge?

18 MR. MANN: Objection. Form.

19 THE WITNESS: No.

20 BY MR. KISSNER:

21 Q. No?

22 Was it true -- sorry. Strike that.

23 What about it is not true and accurate?

24 A. This document is a forecast of the
25 debtor's performance and, as it notes, "all amounts

1 are estimates and not guarantees of actual results
2 and the recipient of this analysis should use their
3 own discretion in adjusting the model's
4 assumptions."

5 Q. So let's go maybe break that down.

6 A. Sure.

7 Q. So there are assumptions in this wind
8 down analysis; fair to say?

9 A. Yes.

10 Q. And to your knowledge, are those
11 assumptions true and accurate today?

12 MR. MANN: Objection. Form.

13 THE WITNESS: These assumptions were
14 reasonable placeholders that were put into this
15 model prior to several key events that would make
16 this more accurate today.

17 BY MR. KISSNER:

18 Q. Sure. At the time, though, that you
19 prepared this preliminary wind down analysis, do you
20 think that the assumptions in it were reasonable and
21 based off of accurate information?

22 MR. MANN: Objection. Form.

23 THE WITNESS: I believe that many of
24 these assumptions were very early estimates meant to
25 give in this instance both the debtor and the

1 committee a tool to assess outcomes that could
2 happen but aren't guaranteed.

3 BY MR. KISSNER:

4 Q. So you said one of the purposes was to
5 give the committee a tool for analysis, correct?

6 A. One of the committee's mandates, I
7 believe, is overseeing liquidity, things like that,
8 and they wanted to see an updated cash forecast.

9 Q. Did the committee assist you in
10 preparing this analysis?

11 A. No, I don't believe so, which is why I
12 made sure to explain that they should use their own
13 discretion in adjusting the assumptions, because we
14 did not have certainty around many of them that were
15 significant in the output.

16 Q. Let's talk a little bit about those
17 assumptions. Can you explain what some of the
18 assumptions were that you made in preparing this
19 document?

20 A. Sure. On page 1 of this tab, Brazil
21 sale proceeds or the liquidation of it, the
22 Bitaccess/Bitcoin Depot settlement, MTL sale
23 proceeds, pursuit of other litigation assets, Cole
24 Kepro settlement among many others.

25 Q. And for those assumptions, it looks like

1 there's a column entitled "Toggle" in which there's
2 a number of scenarios. Do you see that?

3 A. Yes.

4 Q. Can you explain what these various
5 scenarios mean?

6 A. Sure. They're essentially just options
7 that would allow the user to simply toggle different
8 numbers instead of manually inputting a specific
9 number every time they wanted to see a different
10 outcome.

11 Q. Okay. So for the assumptions listed on
12 page 1, the user of this model could toggle
13 different inputs and the model would spit out a
14 different result; is that a fair way of
15 characterizing this?

16 A. Correct.

17 Q. Is one of the assumptions in this model
18 distributions to secured creditors?

19 A. Yes.

20 Q. Okay. Was that something that the user
21 could toggle in this model, do you recall?

22 A. The user would have have been able to
23 toggle unpaid Trangistics claim, post-petition DLI
24 claims and, as we discussed earlier, the sale
25 allocation for unencumbered assets which ultimately

1 was not used.

2 Q. And are you reading that from somewhere
3 or is that your recollection?

4 A. I'm reading it from this page, the first
5 page.

6 Q. Okay. If we could go to the second
7 page. And, again, I'm sorry. This is so small.

8 If you go about two-thirds of the way
9 down the page, there's a line entitled disbursement
10 of admin accruals and restructuring costs. Do you
11 see that?

12 A. Yes.

13 Q. And a little bit below that, about two
14 lines down, there's a row that says secured claim
15 disbursement to Enigma?

16 A. Yes.

17 Q. And there's a dollar amount listed a
18 little further over. Can you read what that dollar
19 amount is?

20 A. \$780,651.

21 Q. So is it fair to say then this wind down
22 budget is premised on the assumption Enigma will
23 only receive approximately \$781,000 on its claims?

24 A. No. This model is premised on the
25 assumption that the user inputs, with their own

1 discretion of several key factors, that outcome the
2 weeks that are forecasted in this budget.

3 Q. Okay. Well, if you changed -- strike
4 that.

5 If one were to modify this \$780,651
6 figure, would that affect the output of the model?

7 MR. MANN: Objection. Form.

8 THE WITNESS: If you were to modify the
9 disbursement to Enigma, the cash balance would
10 change.

11 BY MR. KISSNER:

12 Q. So is it fair to say that the more money
13 that went to Enigma, the less money would be
14 available to satisfy the other line item
15 disbursements on here? Is that fair?

16 MR. MANN: Objection. Form.

17 THE WITNESS: Though this forecast shows
18 all of these disbursements together, I believe the
19 sale proceeds disbursements are a separate issue
20 than the wind down operations of the debtor. This
21 is simply meant to reflect the amount of cash within
22 the estate. So to the extent one of these payments
23 in this forecast are qualified surcharge, those
24 proceeds in the surcharge would pay those expenses,
25 but I don't think they would benefit any of these

1 other line items.

2 BY MR. KISSNER:

3 Q. I guess what I'm trying to get at is --

4 well. I can try to get it another way.

5 Are you familiar with the concept of

6 zero sum?

7 A. Sure. As in it's always net zero?

8 Q. Yeah, or in a sense that when there are

9 finite resources, you know, more for one means less

10 for the other, right?

11 A. Yes.

12 Q. Would you say that the debtor's estate

13 is in a certain sense a zero sum problem?

14 MR. MANN: Objection. Form.

15 THE WITNESS: Is every company not in a

16 zero sum problem?

17 BY MR. KISSNER:

18 Q. You tell me.

19 MR. MANN: Objection. Form.

20 THE WITNESS: Every company has finite

21 resources.

22 BY MR. KISSNER:

23 Q. Right. So would it be fair to say that

24 the more money that goes to pay Enigma, the less

25 money is available to pay for other things?

1 MR. MANN: Objection. Form.

2 THE WITNESS: No.

3 BY MR. KISSNER:

4 Q. No?

5 Why wouldn't that be the case?

6 A. Because if other things -- if you're
7 including qualified 506(c) surcharges and other
8 things, then sure, but I believe that's a separate
9 issue.

10 Q. Sure. But --

11 A. For example, increasing a disbursement
12 to Enigma won't impact, for example, payroll. That
13 surcharge is not for payroll. It's for a specific
14 claim.

15 Q. Let's talk about things that need to be
16 satisfied through the bankruptcy, then, if that's
17 okay.

18 A. Sure.

19 Q. So there are certain administrative
20 expense claims that the debtor would propose to pay
21 under this wind down budget; is that correct?

22 A. The debtor isn't proposing anything
23 here, just simply providing a tool for the cash
24 forecast.

25 Q. Fair enough.

1 This preliminary wind down analysis,
2 though, it includes certain administrative expense
3 claims, correct?

4 A. Correct. Prior to the administrative
5 bar aid, I believe was shortly after this was
6 produced.

7 Q. Why don't we go about halfway down the
8 page to where it says "administrative disbursements"
9 and go all the way over to the right. There's a
10 number listed there. Can you read that?

11 A. I'm not sure I follow. Disbursement of
12 administrate accruals, is that what you're --

13 Q. No, it's -- are we looking at the same
14 thing? Yeah. It's right before cash flow, after
15 wind down.

16 A. I see.

17 Q. So administrative disbursements. And if
18 you'd go all the way over to the right, there's a
19 dollar amount listed. Can you say what that is?

20 A. \$921,061, and that's a negative.

21 Q. Okay. And we've been -- I've at least
22 been referring to this as your preliminary wind down
23 analysis. Would it also be fair to refer to this as
24 a 13-week cash flow?

25 A. It's similar in concept, yes.

1 Q. Okay. Do you see that there's 13 weeks
2 listed at the top?

3 A. I see 12 weeks. Oh, sorry, yes, there
4 is 13 because of week zero.

5 Q. Do you understand this 13-week cash flow
6 forecast to say that there are projected
7 administrative disbursements of \$921,061 over the
8 13 weeks beginning July 10th?

9 A. I see that this model with the
10 assumptions set to reasonable placeholders that are
11 not intended to be indications of reality by the
12 debtor, as noted in the e-mail, that it says
13 administrative disbursements are \$921,061, but that
14 this is not the debtor's best guess of the
15 forecasted periods.

16 Q. That's fair.
17 If you were to try and pay this \$921,061
18 over the next 13 weeks you'd presumably need some
19 money to do so, right?

20 MR. MANN: Objection. Form.

21 THE WITNESS: Yes, either that the
22 debtor already has or that the debtor will collect.

23 BY MR. KISSNER:

24 Q. And then going a little further down, we
25 were talking before there's a secured claim

1 disbursement to Enigma, right?

2 A. Yes.

3 Q. And it's in the amount of \$780,651,
4 correct?

5 A. Correct.

6 Q. And so do you understand this to mean
7 that the debtor projected that over the 13 weeks
8 beginning July 10th, there would be \$780,651 in
9 disbursements to Enigma?

10 A. No.

11 Q. What do you understand this to mean?

12 A. I understand this to be a tool that has
13 not been adjusted and doesn't have firm enough
14 support at this point, hence the caveats and
15 incomplete analytics --

16 Q. Sure.

17 A. -- that shows placeholder numbers, but.

18 Q. Sure. That's fine.

19 Subject to all those caveats, though,
20 with the understanding that this was a draft and
21 there were assumptions baked into it, though, is
22 this not a forecast of what would be payable to
23 Enigma over the 13 weeks beginning July 10th?

24 MR. MANN: Objection. Form.

25 THE WITNESS: I wouldn't characterize

1 this as assumptions, I would characterize them as
2 reasonable placeholders for the user to adjust.

3 BY MR. KISSNER:

4 Q. Now, if the debtor were to wish to make
5 a payment of 750 -- \$780,651 to Enigma, again it
6 would presumably need some cash to do so, right?

7 A. Correct.

8 Q. And cash that had been used to pay
9 \$921,000 of administrative disbursements, that cash
10 would no longer be able to pay Enigma, correct?

11 MR. MANN: Objection. Form.

12 THE WITNESS: The cash that would be
13 otherwise disbursed to Enigma is held in a separate
14 escrow account, not to be touched by the company's
15 operations, at least until ordered by the court.

16 BY MR. KISSNER:

17 Q. That's a fair point. Let's use a
18 different example then.

19 Let's go down to, say, the last
20 category, bankruptcy professional disbursements and
21 carve-out reservations. Are you there?

22 A. Yes.

23 Q. And do you see a line that says debtor
24 financial advisor, Province?

25 A. Yes.

1 Q. And if you go over, you should see a
2 dollar amount listed there. Can you tell me what
3 that dollar amount says?

4 A. Yes, 1.4 million in the negative.

5 Q. So do you understand this to mean that
6 the debtor was forecasting that in the 13 weeks
7 beginning July 10th, it would owe Province
8 \$1.4 million?

9 A. I believe that this was a draft that
10 didn't have all of the necessary information yet and
11 would require reasonable assumptions put in by the
12 user to make the model accurate, as we were unable
13 to come to a consensus at this point on what the
14 proper assumptions were.

15 Q. But subject to those caveats and subject
16 to those assumptions, this 13-week cash flow
17 forecast reflects a projection that Province would
18 be paid \$1.4 million in the 13 weeks beginning
19 July 10th, correct?

20 A. If the user were to put that placeholder
21 in the model, then that would be the projection,
22 yes.

23 Q. Do you know if \$1.4 million is sitting
24 in an escrow account?

25 A. I don't believe, other than the sale

1 proceeds that are in the escrow account currently.

2 Q. Do you think the estate has enough money
3 to pay Province's \$1.4 million fee?

4 A. I believe the estate, as you can see in
5 its most recent filings, believes that there is a
6 reasonable avenue to paying all of the estate's
7 administrative expenses.

8 Q. Is it your opinion that absent a
9 successful surcharge, the estate would have
10 sufficient funds to pay Province \$1.4 million?

11 MR. MANN: Objection. Form.

12 THE WITNESS: I think it's speculative
13 and will require review of more assumptions than I'm
14 comfortable doing at this moment, to determine
15 whether or not that particular surcharge is the
16 difference between not enough money and enough
17 money.

18 BY MR. KISSNER:

19 Q. Have you ever had any discussions with
20 anybody at Province about the fees owed to Province?

21 A. Sure, yes.

22 Q. Can you tell me a little bit -- strike
23 that please.

24 Can you tell me a little bit about those
25 discussions?

1 MR. MANN: Objection. Form.

2 THE WITNESS: I'd have to defer to my
3 general counsel on whether or not I'm allowed to
4 discuss conversations on collections, but we've
5 certainly considered it along the way of monitoring
6 the estate's cash.

7 BY MR. KISSNER:

8 Q. Did anybody ever suggest to you that you
9 needed to surcharge the secured lenders in order to
10 pay Province \$1.4 million?

11 A. I don't believe so.

12 Q. You don't believe so?

13 A. No, I don't remember. I don't remember
14 anyone saying that. I believe there are as you can
15 see a variety of different avenues of recovery of
16 assets that the debtor needs to pursue, including
17 objections to claims that would ultimately benefit
18 the secured lenders, but not that it's necessary to
19 pay Province's accrued fees.

20 Q. Let's go up one line to debtor counsel,
21 Fox Rothschild. Do you see that?

22 A. Yes.

23 Q. Can you go all the way over and read the
24 dollar amount listed?

25 A. The dollar amount is negative

1 1.2 million.

2 Q. Do you understand this to mean that at
3 the time this 13-week cash flow forecast was
4 prepared, the debtor was projecting that in the
5 13 weeks beginning July 10th Fox Rothschild would
6 receive \$1.2 million?

7 A. I believe that this analysis has a
8 variety of illustrative placeholders including
9 estimates for professionals that have not otherwise
10 filed fee applications on the docket or received
11 certificates of no objection, and this is a
12 reasonable placeholder for a user to put in their
13 own assumptions.

14 Q. And without revealing anything
15 privileged, have you talked to anybody at Fox
16 Rothschild about their fees?

17 A. We've certainly had conversations about
18 getting fee applications on file and estimates of
19 what months might cost at the conclusion of the
20 month. But I -- broadly speaking, I would say that
21 covers it.

22 Q. Have you had any conversations with Fox
23 Rothschild about the ability to collect on their
24 fees?

25 A. I believe conversations that may have

1 brought up that topic were focused solely on
2 recoveries to the administrative claims class more
3 broadly.

4 Q. Do you recall anybody at Fox Rothschild
5 telling you that if not for the surcharge, the
6 estate would be unable to pay Fox Rothschild
7 \$1.2 million?

8 MR. MANN: I feel like -- objection,
9 that could stem a little close to privilege of them
10 talking about the invoices and paying their
11 attorneys their fees.

12 MR. KISSNER: Are you instructing him
13 not to answer?

14 MR. MANN: Yeah.

15 MR. KISSNER: Okay.

16 BY MR. KISSNER:

17 Q. Let's go down to a few more lines to
18 independent director.

19 A. Sure.

20 Q. And if you look over to the right, you
21 should see a dollar amount. Can you tell me what
22 that dollar amount is?

23 A. Negative \$25,000.

24 Q. Do you understand this to mean that at
25 the time this 13-week cash flow forecast was

1 prepared the debtor was projecting that in the
2 13 weeks beginning July 10th the independent
3 director would receive \$25,000?

4 A. I believe that this model is reliant on
5 the user putting in their own assumptions and
6 currently has reasonable placeholders, but the
7 independent director's fee is \$25,000 a month.

8 Q. And is that fee included in the
9 surcharge analysis?

10 A. No, I don't believe so.

11 Q. Do you have a sense of why or why not?

12 A. No.

13 Q. Fair.

14 Can you go down to UCC financial
15 advisor?

16 A. Yes.

17 Q. And can you go over to the very far
18 right and read me the dollar amount there?

19 A. Sure. Negative \$650,000.

20 Q. Do you understand this to mean that at
21 the time this forecast was prepared the debtor was
22 projecting that in the 13 weeks beginning July 10th
23 FTI was forecast to receive \$650,000?

24 A. I believe that this output is reliant on
25 the user putting in their own assumptions and has

1 reasonable placeholders until they do so.

2 Q. And do you recall talking to FTI about
3 their fees?

4 A. In any particular instance?

5 Q. Any particular instance?

6 A. Sure. We've discussed FTI's fees
7 before, like the 506(c) surcharge.

8 Q. Okay. Was there any -- ever any
9 discussion with FTI about the collectability of
10 their fees?

11 A. I don't believe so, not out of the
12 context of recovery of the general administrative
13 claims class as a whole.

14 Q. And do you recall ever being told that
15 if the surcharge wasn't successful that there
16 wouldn't be enough money to pay FTI?

17 A. No.

18 Q. Okay. And then let's go down one more
19 to UCC counsel, SewKis. Do you see that?

20 A. Yes.

21 Q. Can you read the dollar amount all the
22 way on the right?

23 A. Negative \$750,000.

24 Q. Did you understand that to mean that at
25 the time of this forecast the debtor was projecting

1 that in the 13 weeks beginning July 10th Seward &
2 Kissel was projected to receive \$750,000?

3 A. Can you repeat the question?

4 Q. Sure. So you see where it says negative
5 \$750,000, correct?

6 A. Yes.

7 Q. Do you understand that to mean that at
8 the time this forecast was prepared the debtor
9 projected that in the 13 weeks beginning July 10th
10 Seward & Kissel would receive \$750,000?

11 A. I believe that the amounts in this
12 forecast are placeholders meant to be adjusted at --
13 by its end recipient and currently has reasonable
14 placeholders in the forecast.

15 Q. Could you -- well, I guess let me close
16 the loop.

17 Have you ever talked to anybody at
18 Seward & Kissel about their fees?

19 A. Not outside of the context of either the
20 surcharge or general amounts owing in order to keep
21 track of the budget.

22 Q. And did you ever talk to anybody at
23 Seward & Kissel about the collectability of their
24 fees?

25 A. Not outside of the context of recoveries

1 for the general administrative claims class.

2 Q. And do you recall ever being told that
3 the surcharge wasn't successful Seward & Kissel --
4 strike that.

5 Do you recall ever being told that if
6 the surcharge was not successful there would not be
7 enough money to pay Seward & Kissel?

8 A. No.

9 Q. And then the line below it, there's a
10 dollar amount all the way at the end. Could you
11 read that?

12 A. Can you clarify? You're talking about
13 the total disbursements to professionals?

14 Q. I am.

15 A. The total to the furthest right is
16 4,675,000.

17 Q. So is that fair to say that this model
18 is forecasting \$4.675 million in unpaid professional
19 fees?

20 A. I think it's -- this model has many
21 placeholders that are meant to be adjusted and were
22 highly preliminary.

23 Q. Sure. But is this \$4.675 million, is
24 this the placeholder for unpaid professional fees
25 that would need to be satisfied?

1 A. That's a total of -- as I count -- eight
2 illustrative placeholders that total \$4,675,000, but
3 would need to be adjusted.

4 Q. And what are some of those adjustments
5 that would need to be made?

6 A. Inclusion of file fees as they came in
7 and adjusted run rates based on the most recent
8 events of the case. For example, the ending of the
9 operations in the sale process and what run rates
10 may look like without those work streams.

11 Q. Would it be fair to say then that you
12 expect the total amount of professional fees in this
13 case will be higher than \$4.675 million?

14 MR. MANN: Objection. Form.

15 THE WITNESS: I don't currently have an
16 estimate off the top of my head of what the
17 professional fees will be in this case outstanding.

18 BY MR. KISSNER:

19 Q. Do you think the estate can currently
20 afford to pay \$4.675 million in professional fees?

21 MR. MANN: Objection. Form.

22 THE WITNESS: I believe based on a
23 variety of factors including objections to various
24 administrative claims and the collection of many of
25 the debtor's recoverable assets, the debtor will

1 likely be able to pay its administrative claims.

2 BY MR. KISSNER:

3 Q. Would it be fair to say that its ability
4 to do so is contingent at least in part on
5 succeeding at surcharging the secured lenders'
6 collateral?

7 MR. MANN: Objection. Form.

8 THE WITNESS: The debtor and its ability
9 to pay off its administrative claims are dependent
10 in that it's one of many factors that will
11 ultimately give us an end result of this entire
12 bankruptcy, but would not say that it is -- "it" is,
13 being the debtor -- is completely reliant on the
14 surcharge.

15 BY MR. KISSNER:

16 Q. Have you ever analyzed what would happen
17 if the debtor's surcharge motion were completely
18 unsuccessful?

19 MR. MANN: Objection. Form.

20 THE WITNESS: Not that I recall, but
21 adjusting a variety of assumptions in this model or
22 an updated version, you could come to any number of
23 results depending on the assumptions that the user
24 puts in the model.

25 BY MR. KISSNER:

1 Q. But have you ever analyzed the specific
2 scenario of the surcharge request being denied in
3 its entirety?

4 MR. MANN: Objection. Form.

5 THE WITNESS: Not that I remember, and
6 if I did, it certainly would have been privileged.

7 BY MR. KISSNER:

8 Q. Okay.

9 MR. KISSNER: We can go off the record.

10 (A discussion is held off the record.)

11 BY MR. KISSNER:

12 Q. Before we proceed, during the break did
13 you talk to anybody about the substance of your
14 testimony?

15 A. No.

16 Q. Okay. So shifting gears a little bit,
17 hopefully for the last time, let's look at Tab 1,
18 Exhibit 1 again real quick. And if you can go to
19 page 3 of Tab 1.

20 So Tab 1 -- oh, sorry. I'm talking
21 about the physical binder. Tab 1, which is
22 Exhibit 1. It's the notice of deposition.

23 If you go to page 3, and so topic 10(c),
24 do you see that?

25 A. The part that reads "that certain

1 document entitled 726" and so on --

2 Q. Yes.

3 A. -- preliminary sale analysis?

4 Q. Yep.

5 And you said you're prepared to testify

6 on that topic?

7 A. Yes.

8 Q. Okay. So backing up, zooming out, what

9 happened to the debtor's kiosks in this case?

10 A. Can you clarify what you mean by that?

11 Q. Sure. What was the ultimate disposition

12 of the -- sorry. Strike that.

13 So I believe earlier you said that the

14 debtor at the time of its bankruptcy filing had an

15 excess of 7,000 kiosks that it owned?

16 A. Those were what the records said, yes.

17 Q. And understanding that the records may

18 not have always been accurate, is that -- would you

19 say that's directionally correct --

20 A. Yeah.

21 Q. -- 7,000-ish?

22 Okay. Broadly speaking what happened to

23 those 7,000 or so DCMs during the case?

24 MR. MANN: Objection. Form.

25 THE WITNESS: They were either abandoned

1 and surrendered to secured lenders, sold in the 363
2 auction to Heller Capital and its affiliates. And I
3 believe a small subset went down to Brazil at one
4 point earlier in the bankruptcy.

5 BY MR. KISSNER:

6 Q. Okay. Do you know about how many of
7 them were sold to Heller Capital?

8 A. I believe -- I want to make sure I get
9 the number right. It was about 5700.

10 Q. That sounds right to me, so.

11 And if I say Heller or the buyer, you'll
12 understand that I'm referring to Heller Capital who
13 was the purchaser of more or less 5700 kiosks?

14 A. Yes.

15 Q. And so you said there were machines that
16 were not sold to Heller?

17 A. Yes.

18 Q. Do you know about how many weren't sold
19 to Heller?

20 A. I don't know the number off the top of
21 my head but the balance of what the company started
22 with, after you subtract the 5700, so roughly the
23 amount either in Brazil or that were abandoned or
24 surrendered.

25 Q. Can you go to Tab 13 in your binder

1 which I'll mark as -- I'm sorry, I lied. Actually,
2 you know what, just to make it easy, because it's
3 already pre-marked, can you open up the Excel file
4 labeled 30. And I'm going to mark that -- that's
5 Tab 30 in the binder and I'm going to mark that as
6 Exhibit 31.

7 (Exhibit 31 marked.)

8 BY MR. KISSNER:

9 Q. And then could you turn to Tab 13 in
10 your binder and we'll mark that as Exhibit 32.

11 (Exhibit 32 marked.)

12 BY MR. KISSNER:

13 Q. Okay?

14 A. I think this is the privileged one. No,
15 this was I think produced.

16 Q. This was produced to us.

17 A. Yeah, just -- I think -- yeah, this is
18 fine.

19 MR. MANN: Yeah, this is what he
20 received.

21 BY MR. KISSNER:

22 Q. So Exhibit 32, which is the physical, in
23 the binder --

24 A. Tab 13.

25 Q. -- Tab 13, can you just -- do you

1 recognize this document?

2 A. Yes.

3 Q. Can you describe to me what it is?

4 A. This is a immediate use of liquidity

5 analysis. It's preliminary, subject to negotiations

6 under FRE 408, and it shows immediate use of nonsale

7 proceeds and a proposal of adjustments to sale

8 proceeds for review, I believe, by -- I don't know

9 if this version went to Enigma and Genesis or the

10 committee. I believe all of them at once.

11 Q. Okay. Did you prepare this document?

12 A. I prepared this document with feedback

13 from both Province and counsel.

14 Q. And when you say "counsel," that refers

15 to whom?

16 A. The debtor's counsel.

17 Q. The debtor's counsel.

18 And do you know when this was prepared?

19 A. I don't know the exact date.

20 Q. Could we turn back to Tab 1, Exhibit 1

21 which is the notice of deposition.

22 A. Sure.

23 Q. And if we could go to topic 10(c)?

24 A. Yes.

25 Q. Can you -- you see topic 10(c) talks

1 about a sale proceeds analysis?

2 A. Yes, dated July 26, 2023.

3 Q. And is Tab 13, Exhibit 32, is that the

4 sale proceeds analysis referred to in the notice of

5 deposition?

6 A. Yes, I believe so.

7 Q. Okay. And reading your notice of

8 deposition, does that refresh your recollection as

9 to when Exhibit 32 was created?

10 A. Yes. And I believe there was also

11 corresponding Excel file requested by AV Tech that

12 was sent that detailed the costs.

13 Q. Is everything in Exhibit 32 true and

14 accurate, to the best of your knowledge?

15 A. Certainly at the time, to the best of my

16 knowledge. I'm sure there are estimates and amounts

17 to be negotiated in this document along with further

18 reconciliation of the number of kiosks.

19 Q. Okay. Fair.

20 So let's turn back to the Excel, which

21 is Exhibit 31.

22 A. Okay.

23 Q. Do you recognize this document?

24 A. Yes.

25 Q. What is it?

1 A. This looks like a working draft of the
2 preliminary sale analysis, a prior iteration of
3 either this or what ultimately became the 506(c)
4 surcharge or a variant of it.

5 Q. Said another way, is this an iteration
6 of the model underlying Exhibit 32?

7 MR. MANN: Objection. Form.

8 THE WITNESS: You're referring to this
9 document --

10 BY MR. KISSNER:

11 Q. Tab 13.

12 A. -- Tab 13?

13 I believe this was a separate tab, to be
14 more concise or descriptive, but this is likely a
15 more recent iteration of this file that we're
16 looking at on the screen.

17 Q. And Exhibit 31, which is what we have up
18 on the screen, did you prepare it?

19 A. Yes, with feedback from I believe
20 Province, debtor counsel, and maybe that was it at
21 the time.

22 Q. Subsequently, did you receive feedback
23 from other parties other than Province and debtor's
24 counsel on Exhibit 31?

25 A. I don't recall. Do you have something

1 more specific?

2 Q. I don't.

3 A. Okay.

4 Q. Do you know when Exhibit 31 was
5 prepared?

6 A. I don't off the top of my head.

7 Q. Okay. Is everything in this model true
8 and accurate, to the best of your knowledge?

9 MR. MANN: Objection. Form.

10 THE WITNESS: I believe this model,
11 similar to the forecast we discussed earlier, has a
12 variety of assumptions in it that would need to be
13 adjusted, and contains certainly several estimates.

14 BY MR. KISSNER:

15 Q. Do you think those assumptions were
16 reasonable at the time that they were made?

17 A. I believe that this is a working draft.
18 Maybe the standards for reasonable are different.
19 But it was -- if it was sent externally, it wasn't
20 completely arbitrary.

21 Q. Okay. Is there anything that you'd --
22 strike that.

23 Is there anything that you would change
24 about this model if you were to prepare it today?

25 A. I'm sure that there are a variety of

1 differences between this and where the secured
2 lenders and the debtor currently are with their
3 negotiations, and I don't feel comfortable going
4 through all of them, but there's certainly several.

5 Q. Now before you said certain collateral
6 was abandoned by the debtor to secured lenders
7 throughout the case?

8 A. Yes.

9 Q. Was any collateral abandoned to Enigma?

10 A. Presumably, if they encumbered machines
11 that were abandoned, which I believe they did.

12 Q. Do you recall how many machines that
13 constituted Enigma's collateral that were abandoned
14 throughout the case?

15 A. Sorry, can you repeat your question.

16 Q. Sure. Do you recall how many of the
17 machines pledged as Enigma's collateral were
18 abandoned to Enigma throughout the case?

19 A. I believe we know how many there were
20 associated with Enigma LIDs. I'm not sure that
21 there has been agreement on how many kiosks Enigma
22 encumbered that were rejected or abandoned.

23 Q. Could we go to Tab 14 which is the other
24 Excel. And it was exhibit -- oh, I apologize, not
25 Tab 14 -- yeah, Tab 29. Could we go to Tab 29 which

1 was Exhibit 7. It's the other spreadsheet. I

2 apologize for that.

3 And if you could go to cell I-3, does

4 that refresh your recollection of how many machines

5 pledged to Enigma were abandoned throughout the

6 case?

7 A. I don't believe that the LIDs are an

8 indicator of whether or not a machine was pledged.

9 But I believe that at the time of this sheet that

10 we're looking at, that was the count of LIDs that

11 also appeared in the UCC -- Enigma's UCC filing.

12 Q. And there were 537 of those?

13 A. That's what this analysis says, yes.

14 Q. And those were abandoned during the

15 case, correct?

16 MR. MANN: Objection. Form.

17 THE WITNESS: Those were LIDs associated

18 with leases that were rejected by the debtor and

19 presumably also abandoned, if Enigma did not or

20 Genesis did not collect them.

21 BY MR. KISSNER:

22 Q. Okay. Could we go back to Tab 30, which

23 is Exhibit 31 and it's the other Excel spreadsheet.

24 Could you go over to the worksheet entitled

25 "Rejected Machines."

1 A. Sure.

2 Q. And you said that you prepared this
3 Excel worksheet, right?

4 A. Yes, with likely with feedback from
5 Province and counsel. I don't remember the specific
6 circumstances, though.

7 Q. So would it be fair to say that you're
8 competent at using Microsoft Excel?

9 A. Of course.

10 Q. Are there any hidden columns in the
11 rejected machines worksheet?

12 A. Yeah, it looks like it.

13 Q. Could you unhide all the columns?

14 A. Sure. Okay.

15 Q. And do you see column F?

16 A. Yes.

17 Q. Can you go down to F-6?

18 A. Yes.

19 Q. Can you read me what that says?

20 A. 512.

21 Q. What do you understand that number to
22 represent?

23 A. It appears that this is a count of the
24 number of serial numbers that were likely tied to
25 LIDs rejected by the debtor per the debtor's

1 records.

2 Q. So do you understand this to mean that,
3 identified by serial number, approximately 512
4 machines pledged to Enigma were abandoned during the
5 case?

6 A. Yes. Assuming that the debtor's books
7 and records are correct.

8 Q. Okay. That's fair.
9 Can you go back, staying in the same
10 work book, to the worksheet entitled "Sale Analysis"
11 in red?

12 A. Sure.

13 Q. Okay. Now, does anything on this sheet
14 reflect that certain machines are subject to a
15 security interest in Enigma's favor?

16 A. Yes, though subject to change and
17 further reconciliation, the distribution of the
18 machines by bid allocation buckets attempt to
19 connect serial numbers that appear in each lender's
20 collateral documents and attempts to count them.

21 Q. Sure. That's fair.

22 But this does reflect a number of
23 machines that is being pledged to Enigma, right?

24 A. Yes.

25 Q. And what's that number?

1 A. 2,368 total.

2 Q. And let's set aside the question of
3 surcharge.

4 But would it be fair to say that to the
5 extent that Enigma has a security interest in a
6 given machine it would be entitled to receive the
7 proceeds from the sale of that machine?

8 A. Yes, if counsel or the courts agree that
9 it's a legitimate means of identifying collateral,
10 then yes.

11 Q. Certainly.

12 But that's sort of the gist of this
13 document, right, that certain machines -- certain
14 lenders have certain interest in certain machines
15 and so there's an allocation of the related sale
16 proceeds?

17 A. I don't believe that I would
18 characterize it as the "gist" of the document. I
19 believe I would characterize it as an illustrative
20 allocation hoping to give the secured parties an
21 idea of where they stand, but otherwise primarily
22 focuses on potential adjustments to sale proceeds
23 since that's where the analysis ultimately ends.

24 Q. Okay. Albeit illustrative, though, this
25 would suggest that sale proceeds would be allocated

1 to Enigma based off of 22,368 machines being in its
2 collateral package, correct?

3 MR. MANN: Object to form.

4 THE WITNESS: If that's what was
5 ultimately determined as correct and ordered by the
6 court, yes. But it appears that there are ongoing
7 disputes about those numbers.

8 BY MR. KISSNER:

9 Q. Now previously we discussed that under
10 the UCC filing and the security agreement there were
11 3,677 machines that were identified, accurately or
12 not, as Enigma's collateral, correct?

13 MR. MANN: Objection. Form.

14 THE WITNESS: Sorry, can you repeat your
15 question.

16 MR. KISSNER: Could you read that back.

17 (The record is read by the reporter.)

18 BY MR. KISSNER:

19 Q. Yeah. I don't like that question
20 either. We can strike that.

21 Before we discussed that Enigma's UCC
22 filing and related security agreement identified
23 3,677 machines as constituting Enigma's collateral,
24 correct?

25 MR. MANN: Objection. Form.

1 THE WITNESS: I believe we discussed
2 that the UCC filing put forward a total number and a
3 schedule of Enigma's asserted collateral with
4 various identifiers, some of which have come into
5 question as whether or not they're a practical means
6 of identifying collateral.

7 BY MR. KISSNER:

8 Q. And we discussed that, again, whether or
9 not -- setting aside whether it's the best means of
10 doing so, we discussed that it appears the UCC
11 filing and the security agreement identify machines
12 by using location ID, correct?

13 MR. MANN: Objection. Form.

14 THE WITNESS: The UCC filing I believe
15 put forward a total number based on unique CCIDs.

16 BY MR. KISSNER:

17 Q. Yeah, that's correct. I'm sorry. I
18 misspoke. So, okay, that's fair.

19 And if we were to use LIDs as the
20 relevant metric, do you recall about how many
21 machines would have been in Enigma's collateral
22 package?

23 MR. MANN: Objection. Form.

24 THE WITNESS: I do not.

25 BY MR. KISSNER:

1 Q. We can go to Tab 7 which is the other
2 Excel -- or Exhibit 7, which is the other Excel. Go
3 to cell I-4. Can you read that number?

4 A. 3,303.

5 Q. Does that refresh your recollection as
6 to, if LID were to be used as the identifier, how
7 many machines would be in Enigma's collateral
8 package?

9 A. Yes, assuming the debtor's books and
10 records were accurate.

11 Q. And how many machines would that be?

12 A. Sorry, I don't understand your question.

13 Q. Well, so I asked you to read I-4, which
14 was how much?

15 A. 3,303.

16 Q. Okay. So does that number refresh your
17 recollection as to how many machines were in
18 Enigma's collateral package, assuming that LID was
19 the correct identifier?

20 A. Yes, I believe it would indicate 3,303
21 LIDs were also in Enigma's UCC filing. And to
22 refresh, LIDs aren't tied specifically to a location
23 or a lease.

24 Q. Right. I think before you said that the
25 best manner of identifying collateral would be

1 through serial numbers; is that correct?

2 A. Physically inventorying serial numbers.

3 Q. Okay. And so do you recall -- if serial
4 numbers were deemed to be the correct identifier, do
5 you recall how many machines would be in Enigma's
6 collateral package?

7 A. This analysis says 3,092 Enigma serial
8 numbers from its UCC filing were also in the
9 debtor's books and records.

10 Q. Okay. Let's stay in Exhibit 31 which is
11 the life model Excel spreadsheet that you have open.

12 A. Okay.

13 Q. Can you go to the worksheet called
14 warehouse machines?

15 A. Sure.

16 Q. And can you unhide any hidden columns?

17 A. Yes.

18 Q. And can you clear any filters?

19 A. Okay.

20 Q. And can you read cell I-6 for me?

21 A. Sure. 717.

22 Q. And what does that number represent?

23 A. That appears to be a count of the number
24 of machines with serial numbers that also match a
25 serial number from Enigma's UCC filing, that the

1 debtor's records at the time showed were in
2 warehouses.

3 Q. So that's what the sale analysis bases
4 its assumption, that 717 warehouse machines are
5 Enigma's, comes from; is that correct?

6 A. This preliminary sale analysis that's
7 subject to material change allocated these costs
8 based on that, but as it says, subject to change
9 upon further reconciliation.

10 Q. All right. I just want to make sure I
11 have everything. Okay. This number 717 -- strike
12 that.

13 Do you recall before saying that certain
14 of the debtor's machines don't have serial numbers?

15 A. I remember discussing the conversations
16 that I had with debtor employees about how certain
17 machines don't have serial numbers.

18 Q. But is it your understanding that
19 certain of the debtor's machines don't have serial
20 numbers?

21 A. Yes.

22 Q. So this method of identifying machines,
23 this wouldn't capture any machines without serial
24 numbers, correct?

25 A. Serial numbers are the best way of

1 identifying a unique machine, particularly if a
2 creditor has a specific interest in a unique
3 machine.

4 Q. But if a machine doesn't have a serial
5 number, what then?

6 MR. MANN: Objection. Form.

7 THE WITNESS: I believe that's a
8 question for counsel. But in this particular
9 analysis it would be assumed to fall under Genesis's
10 blanket lien.

11 BY MR. KISSNER:

12 Q. Is that assumption based off of the
13 instruction of counsel?

14 MR. MANN: Objection. Form.

15 THE WITNESS: Yes.

16 BY MR. KISSNER:

17 Q. Setting aside what counsel says, if you
18 were to attempt to identify a machine without a
19 serial number, what method would you use?

20 MR. MANN: Objection to form.

21 THE WITNESS: Can you specify? Do you
22 mean identify it as a unique machine?

23 BY MR. KISSNER:

24 Q. Sure.

25 A. I'd hesitate to recommend using the

1 other identifiers.

2 Q. Okay.

3 A. The CCID can change any time the
4 machine's computer's replaced or reprogrammed or
5 updated, and the LID doesn't follow a machine if
6 it's moved from one location to another.

7 Q. Can we go to the worksheet entitled
8 "Field Machines"?

9 A. Yes.

10 Q. And can we unhide any hidden columns?

11 A. Yes.

12 Q. And can you clear any filters. I don't
13 think there are any, but.

14 A. Okay.

15 Q. And can you go to cell I-6?

16 A. Okay.

17 Q. Can you read what it says?

18 A. 1,651.

19 Q. What do you understand that number to
20 represent?

21 A. The number of serial numbers the
22 debtor's books and records said were in the field
23 that also matched a serial number from Enigma's UCC
24 filing.

25 Q. And so was this -- strike that.

1 The sale analysis, it's assumption --
2 strike that as well.

3 The sale analysis, which assumes that
4 1,651 warehouse machines are Enigma's, it bases that
5 assumption off of this worksheet; is that correct?

6 A. The sale analysis in this Excel file,
7 yes, I believe so. Let me confirm.

8 Yes, 1,651.

9 Q. But this number, it wouldn't reflect any
10 machines that don't have serial numbers, correct?

11 A. Correct, at least to my knowledge.

12 Q. And then can we go over to the worksheet
13 entitled "Loss and Decom Machines"?

14 A. Sure.

15 Q. And I'll ask you to unhide all columns
16 and clear any filters.

17 A. Okay.

18 Q. So column F that says Enigma at the top.
19 Do you see that?

20 A. Yes.

21 Q. What does that represent?

22 A. It appears to be a column that notes any
23 serial number in the debtor's books and records that
24 also match an Enigma serial number from its UCC
25 filing that the debtor's books and records had

1 indicated in some way was either a loss or decom
2 machine through the reconciliation process.

3 Q. When you say decom, what does that mean?

4 A. Decommissioned.

5 Q. So would it be fair to say that the
6 serial numbers listed in this column are machines
7 that constituted the most collateral that have
8 either been lost, stolen or decommissioned?

9 A. Assuming the books and records are
10 correct, yes.

11 Q. And can you run a count of how many
12 Enigma serial numbers are identified in column F?

13 A. Right now?

14 Q. Sure.

15 A. Happy to.

16 May be not perfect, but it appears --

17 Q. 57?

18 A. At least 57.

19 Q. So would this suggest that 57 machines
20 that constituted Enigma's collateral were either
21 lost, stolen or decommissioned?

22 MR. MANN: Objection. Form.

23 THE WITNESS: At the time of this
24 analysis, yes, that's what the books and records had
25 reflected.

1 BY MR. KISSNER:

2 Q. And if you scroll over to column P
3 entitled status, let me know when you're there.

4 A. Okay.

5 Q. What does this column represent?

6 A. Generally speaking I can see that there
7 are descriptors of decommissioned, lost, stolen or
8 blank.

9 Q. Can you tell me to use this to -- strike
10 that.

11 Based off of this can you tell me how
12 many Enigma machines were decommissioned?

13 A. I would not rely on this column solely
14 as the way to identify those machines.

15 Q. Why not?

16 A. The debtor's books and records were
17 certainly complicated and not always consistent in
18 where this information could be found.

19 Q. Do you think the -- okay.

20 Well, why don't we filter column P to
21 only decommissioned machines.

22 A. Okay.

23 Q. How many come up for Enigma?

24 A. It looks like roughly 53.

25 Q. But you said you wouldn't rely on that

1 number?

2 A. I would want to check it with other
3 sources before I went forward with asserting that
4 that was the final number.

5 Q. Do you think the final number is higher
6 or lower than 53?

7 A. I don't -- I believe it's higher based
8 on the 57 in this sheet, but I don't have any reason
9 to believe that it's different from that without
10 referring back to the source materials.

11 Q. And what does decommissioned mean in
12 this context?

13 A. My understanding is that those machines
14 were taken out of the field for any number of
15 reasons, including being no longer functional,
16 vandalized in some way or potentially at the end of
17 it's useful life.

18 Q. Were any of the decommissioned machines
19 sold to Heller?

20 A. I'd want to review the APA with counsel.
21 I believe that Heller purchased the contents of the
22 warehouses, and if parts of machines were stripped
23 or parted out and in those warehouses, I'd want
24 counsel to validate whether or not those were
25 included in the sale. But I don't know the answer

1 to that.

2 Q. Do you know if decommissioned machines
3 were included in your surcharge analysis?

4 A. No, they were not. I don't believe they
5 were as these are no longer functional machines, to
6 my understanding.

7 Q. Were the decommissioned machines --
8 strike that.

9 You just testified that certain of the
10 decommissioned machines are in warehouses; is that
11 correct?

12 A. Potentially parts of them could be. I
13 don't know the state of the decommissioned machines
14 other than they're no longer reflected as an asset
15 on the debtor's books and records.

16 Q. Would they be stored in the same
17 warehouses as other machines?

18 A. I'm not sure of that.

19 Q. Did you ever make an attempt to
20 differentiate between costs incurred in storing
21 decommissioned machines versus costs incurred in
22 storing warehoused machines?

23 A. No.

24 Q. Going back to column P, can we filter
25 for loss now?

1 A. Maybe I'm missing something but I don't
2 see any -- oh, that's why. Okay.

3 Q. It shows one machine, right?

4 A. Yes.

5 Q. Do you understand that to mean that the
6 debtor lost one machine constituting Enigma's
7 collateral during the case?

8 A. I would specify that "loss" doesn't
9 necessarily mean they don't know where it is.
10 Rather, it might have been part of a loss event such
11 as a theft or a robbery.

12 Q. Can we filter for stolen, then, in
13 column P?

14 A. Sure.

15 Q. And there's three machines listed; is
16 that right?

17 A. I see three, yes.

18 Q. So would you take that to mean that in
19 total four machines were either lost or stolen that
20 constituted Enigma's collateral?

21 A. According to the records that we had,
22 yes.

23 Q. But you think these records might not be
24 accurate?

25 A. I certainly have reservations and

1 concerns about them.

2 Q. Do you think that the true number of
3 lost and stolen machines constituting Enigma's
4 collateral is higher or lower than four?

5 A. I don't know that I have a particular
6 reason to believe that number is in either direction
7 unless there's something you can point me to.

8 Q. Okay. Fair enough.

9 And do you know if the four lost or
10 stolen machines were incorporated in the surcharge
11 analysis?

12 A. I don't believe so. I don't believe
13 that the buyer ascribed a value to them. My
14 understanding is purchase price adjustment was made
15 because of those machines in particular; if that's
16 what's being reflected here in those records,
17 something similar.

18 Q. And let's just go back one last time to
19 the topic of machines in Enigma's collateral
20 package. Okay?

21 A. Okay.

22 Q. So previously we discussed how, assuming
23 LID is the correct identifier, there's approximately
24 3,677 machines subject to Enigma's liens?

25 A. I believe --

1 MR. MANN: Object.

2 THE WITNESS: -- it was CCIDs.

3 BY MR. KISSNER:

4 Q. Sorry. You're right. I keep doing that
5 and I apologize to you.

6 So we discussed previously that about
7 3,303 machines would be identified as Enigma's
8 collateral assuming location ID is accurate?

9 A. Yes, but it would not be in my
10 assumption that location ID is an appropriate way of
11 identifying collateral.

12 Q. And assuming CCID is an appropriate
13 means of identifying collateral we discussed how
14 3,676 machines or 3,677 machines would be identified
15 as Enigma's collateral, correct?

16 A. If you were to use that as your
17 assumption, yes, but I would not use that as my
18 assumption.

19 Q. And we discussed how, depending on which
20 identifier is used, somewhere between 500 and, say,
21 55 or so of Enigma's machines were abandoned
22 throughout the case. Do you recall that?

23 MR. MANN: Objection. Form.

24 THE WITNESS: I remember discussing the
25 number of LIDs that appeared in Enigma's UCC filing

1 that were also rejected, that the debtor's records
2 indicated may be associated with some of Enigma's
3 collateral.

4 BY MR. KISSNER:

5 Q. Okay. And that number, depending on
6 which identifier you use, would range somewhere
7 between 500 and 550?

8 A. That sounds correct based on what we've
9 reviewed.

10 Q. Okay. So let's be -- we can be
11 conservative and let's just say it was 550 machines
12 that were abandoned throughout the case. Is that
13 okay?

14 A. Sure.

15 Q. Okay. So -- and let's use CCID. If
16 there were 3,677 machines that were Enigma's as of
17 the petition date and about 550 of them were
18 abandoned throughout the case, about how many
19 machines would be left to be sold to Heller?

20 MR. MANN: Objection. Form.

21 THE WITNESS: I don't know that I feel
22 comfortable making assertions about that given the
23 complexity of this issue.

24 BY MR. KISSNER:

25 Q. Okay, but I mean whether or not an

1 identifier's valid or the correct one to use, you'd
2 agree that that's a legal conclusion, right?

3 A. I agree that there are legal decisions
4 that need to be made with respect to what the
5 appropriate identifier is and, additionally,
6 additional work that needs to be done to get the
7 debtor's books and records up to the standard that
8 the secured lenders are looking for.

9 Q. Right. But in your job, you're asked to
10 make projections and forecasts and assumptions based
11 off of legal input from counsel all the time, right?

12 MR. MANN: Objection. Form.

13 THE WITNESS: Yes.

14 BY MR. KISSNER:

15 Q. Okay. So for this exercise, can we just
16 assume that location ID is the correct way to
17 identify collateral?

18 MR. MANN: Objection. Form.

19 THE WITNESS: For the purpose of a
20 thought experiment, yes, but that's not the
21 assumption I would be using.

22 BY MR. KISSNER:

23 Q. Okay. I understand.

24 So if there are 3,677 machines at the
25 beginning of the case that were identified as

1 Enigma's collateral, correct --

2 A. Yes.

3 MR. MANN: Objection. Form.

4 BY MR. KISSNER:

5 Q. -- and then conservatively 550 machines
6 were abandoned to Enigma throughout the case,
7 correct --

8 A. If we're using the hypothetical numbers
9 that we just discussed, yes.

10 Q. Okay. So then that would imply
11 approximately 3,127 machines left to be sold to
12 Heller that were Enigma's?

13 MR. MANN: Objection. Form.

14 THE WITNESS: If we're relying on the
15 hypothetical assumptions that we just discussed and
16 your math, yes.

17 BY MR. KISSNER:

18 Q. And so in your sales proceeds analysis,
19 that's based off an assumption that only 2,368
20 machines pledged to Enigma were sold, correct?

21 MR. MANN: Objection. Form.

22 THE WITNESS: I don't recall without
23 looking back to it, but yes.

24 BY MR. KISSNER:

25 Q. Do you know the reason for the

1 discrepancy between 3,127 and 2368?

2 A. It could be any number of things
3 including the lack of serial numbers for unique
4 machines, discrepancies and omissions in the
5 debtor's books and records, among other things that
6 we've done our best to iron out throughout this
7 bankruptcy.

8 Q. Would you agree, though, that the bulk
9 of the difference between those two numbers is based
10 off of the fact that 2368 is based off of serial
11 numbers and 3127 is based off of CCID?

12 A. If I recall, Enigma's UCC filing
13 excluded serial numbers for somewhere around 500
14 machines and I assume that that is part of the
15 discrepancy.

16 Q. Okay. Are you aware that the committee
17 has filed a motion to challenge Enigma's liens?

18 A. I am familiar with that at a high level,
19 yes.

20 Q. Can you describe in your own words what
21 the nature of that challenge is, if you know?

22 MR. MANN: Objection. Form.

23 THE WITNESS: I don't know as it's, I
24 believe, a work stream of the committee's and not
25 the debtor's.

1 BY MR. KISSNER:

2 Q. Have you ever talked to the committee or
3 its advisor about their challenge?

4 A. I've certainly given them information
5 similar to that that Enigma has.

6 Q. What does that mean?

7 A. An explanation of what I've been told
8 certain identifiers do, an Excel spread of the
9 information we have to identify collateral, and some
10 of the problems with reconciling the debtor's books
11 and records may be among other details about how
12 many machines are counted depending on which
13 identifier you use.

14 Q. Are you aware that one of the bases for
15 the committee's challenge to Enigma's liens is that
16 certain machines in Enigma's UCC filing do not have
17 serial numbers?

18 MR. MANN: Objection. Form.

19 THE WITNESS: I'm familiar with the
20 topic through this work, but I didn't participate in
21 the development of whatever they've filed.

22 BY MR. KISSNER:

23 Q. That's fair.

24 But if I were to tell you that one of
25 the primary bases for the committee's challenge is

1 that the UCC filing of Enigma doesn't list serial
2 numbers for approximately 500 machines, would you
3 have reason to think that was incorrect?

4 MR. MANN: I'm going to object. I feel
5 like this is going beyond the scope of the topics
6 that he was presented today. We're going into what
7 the committee and their -- you know.

8 MR. KISSNER: I'm just asking his
9 awareness of issues in the case as they might have
10 informed the surcharge analysis.

11 THE WITNESS: I believe the objective of
12 the surcharge analysis is to identify the aggregate
13 costs to be proposed to be surcharged, that we did
14 provide preliminary estimates of how those costs
15 would be allocated.

16 BY MR. KISSNER:

17 Q. I guess -- oh, sorry. Go ahead.

18 A. That's all.

19 Q. I guess what I'm getting at is that the
20 sale proceeds analysis assumes that machines without
21 serial numbers are not in Enigma's collateral
22 package, correct?

23 MR. MANN: Objection. Form.

24 THE WITNESS: There is certainly a
25 preliminary sale analysis that provides allocation

1 of proceeds and costs that's subject to resolution
2 of several disputes. But identifying machines by
3 serial number as a practical matter was the easiest
4 and best way, most reliable way to identify a unique
5 machine with the records that we had.

6 BY MR. KISSNER:

7 Q. Okay. Would it be fair to say, then,
8 that if the committee were to succeed in its
9 challenge, that wouldn't really impact the sale
10 proceeds analysis or the surcharge analysis?

11 MR. MANN: Objection. Form.

12 THE WITNESS: I believe unless there's
13 agreement by the secured creditors on those
14 allocations, it would not impact it. Otherwise, the
15 analysis is focused on the aggregate costs to be
16 surcharged.

17 BY MR. KISSNER:

18 Q. Right. I guess what I'm getting at is
19 that the sale proceeds analysis proceeds from the
20 assumption that 2,368 machines are Enigma's,
21 correct?

22 A. That sounds right.

23 Q. And none of those machines are machines
24 that lack serial numbers, correct?

25 MR. MANN: Objection. Form.

1 BY MR. KISSNER:

2 Q. Put another way, all of those machines
3 have serial numbers, correct?

4 A. To clarify, you're talking about the
5 2,368 machines in the preliminary sale analysis?

6 Q. Yep.

7 A. Yes. That would be the aggregate of a
8 count of serial numbers that matched Enigma's UCC
9 filing that were shown in the debtor's records for
10 warehouse machines, and the same for machines in the
11 field.

12 Q. And if the committee were successful in
13 challenging Enigma's liens on machines that lack
14 serial numbers, would that result in any additional
15 proceeds being available for the estate?

16 MR. MANN: Objection to form.

17 THE WITNESS: My understanding -- I'm
18 not a lawyer and would defer to them -- is that
19 "made available to the estate" implies that it would
20 go to the administrative claims, but I believe it
21 would go to Genesis under its blanket lien. Though
22 again I would defer to the lawyers.

23 MR. KISSNER: Maybe we can turn it over
24 to you, Rob, while I look, but I'm hopeful that that
25 should be it for me.

1 (A discussion is held off the record.)

2 (Exhibit 33 through 35 marked.)

3 EXAMINATION

4 BY MR. KINAS:

5 Q. Good afternoon, Mr. James. My name is
6 Robert Kinas, K-I-N-A-S. I'm with Snell & Wilmer
7 and we represent Genesis. I just have a couple of
8 quick questions.

9 First, I wanted to just show you the
10 three exhibits which are three different notices of
11 depositions. One's the 30(b)(6) of Province, one is
12 the deposition of you personally, and one is the
13 deposition for 30(b)(6) for Cash Cloud.

14 (A discussion is held off the record.)

15 MR. KINAS: And those are exhibits --
16 what are the numbers on those?

17 THE REPORTER: 33 to 35.

18 BY MR. KINAS:

19 Q. So I just want to ask whether you've
20 seen those before?

21 A. Yes.

22 Q. Perfect.

23 Then we have an agreement with Enigma's
24 counsel. We've agreed to ask our questions in
25 conjunction with this just for efficiency's sake.

1 A. Thank you.

2 Q. So in the binder I'm going to be asking
3 you a couple of questions about Tab 3. I believe
4 it's Exhibit 2, it's your declaration. And then I
5 will also be asking you a few questions about the
6 surcharge motion which you've been handed as
7 Exhibit 36.

8 A. Okay.

9 Q. So as part of your declaration, which is
10 Tab 3, Exhibit 2, if you could turn to page 4. Let
11 me know when you are there.

12 A. Okay. I'm there.

13 Q. So on page 4, paragraph 9, you mentioned
14 that you received certain fee statements or e-mails
15 from -- let's just go through them one by one --
16 from the debtor's counsel for Fox Rothschild. Did
17 they simply provide you an e-mail with the amount of
18 fees and costs associated with the sale process?

19 MR. MANN: Objection to form.

20 THE WITNESS: I believe Fox Rothschild
21 was a combination of the fee statements and
22 discussions orally with representatives of the
23 debtor's counsel.

24 BY MR. KINAS:

25 Q. And did either you or members of

1 Province independently review those fee statements
2 that related to the sale process?

3 A. Not in their entirety.

4 Q. Would it be true that you accepted the
5 Fox Rothschild representation of fees and costs
6 related to the sale process?

7 A. I believe a majority of them had already
8 received certificate of no objections, so therefore,
9 yes.

10 Q. And then as to committee counsel, your
11 earlier testimony was that you received an e-mail
12 from committee counsel that set forth the fees and
13 costs associated with the sale process; is that
14 correct?

15 A. Yes.

16 Q. And did you or any member of Province
17 independently review the fee statements to determine
18 the accuracy of that amount?

19 A. We did not review Seward & Kissel's fee
20 statements in full.

21 Q. And then as to FTI, the financial
22 advisors for the committee, you received an e-mail
23 from Michael Tucker that set forth the fees and
24 costs related to the sale process; is that true?

25 A. Yes, we received an e-mail from FTI.

1 Q. And did you or anyone at Province
2 independently review the FTI backup statements to
3 determine whether that was an accurate number?

4 A. I don't believe they were made available
5 to us, so no.

6 Q. So now, if you would turn your attention
7 to -- Exhibit 36 is the surcharge motion; is that
8 correct? Do you have a copy of that in front of
9 you, Exhibit 36?

10 A. Yes.

11 Q. On top of that, it would be
12 Document 926, just to make sure we're looking at the
13 same document?

14 A. Yes.

15 Q. So have you seen the -- we'll just call
16 this the surcharge motion. Does that work for you?

17 A. Yes.

18 Q. So have you seen this surcharge motion
19 before?

20 A. Yes.

21 Q. And have you read it?

22 A. Though I'm not a lawyer, yes, I've
23 reviewed it.

24 Q. If you could turn to page 6 and read
25 line 19 to 21 by yourself and let me know when

1 you're done.

2 A. You said 19 to 21?

3 Q. Yep, lines 19 to 21. Let me know when
4 you're done.

5 A. "As part" --

6 Q. You don't have to read it out loud.
7 Just read it to yourself and let me know.

8 A. Okay.

9 Q. And so according to the representations
10 in surcharge motion Province was involved and
11 consulted with the debtor about the sale of the
12 assets at the auction; is that correct?

13 A. I don't believe I'm the appropriate
14 person to discuss these topics.

15 Q. Are you generally aware, was Province
16 involved in the sale process?

17 A. Yes.

18 Q. Okay. If you turn to page 7 and if you
19 read lines 3 and 4. Let me -- read it to yourself.
20 Just let me know when you finish reading those.

21 A. Okay.

22 Q. And as you sit here today, are you aware
23 that the debtor filed a motion to approve the sale
24 results on or about June 19, 2023? Are you aware?

25 A. I don't believe I'm the appropriate

1 person to discuss these.

2 Q. Are you aware of those facts personally?

3 A. I'm aware that the debtor filed a sale
4 motion that was approved. Other than reviewing this
5 document in front of me, would not have known the
6 dates.

7 Q. Okay. Same page, if you could review
8 page 7, lines 16 -- or 16 through 18 and let me know
9 when you're done.

10 A. Okay.

11 Q. So in the surcharge motion -- again at
12 page 7, line 16 -- the debtor states that the sale
13 resulted in substantially less value to the estate
14 than the parties anticipated. Do you see that
15 sentence?

16 A. Yes.

17 Q. And in your role as vice president of
18 Province, are you aware of -- what was the range of
19 possible sale prices that the -- that Province
20 thought possible before the auction process started?

21 A. I would defer to the principal who led
22 the sale process on this.

23 Q. And who is that?

24 A. Daniel Moses.

25 Q. Same page, at page 7, lines 21 to 23, if

1 you could review those and let me know when you're
2 done.

3 A. Okay.

4 Q. Do you see there where -- in the
5 debtor's surcharge motion the debtor represents that
6 while the debtor anticipated other potential sources
7 of recovery, the sales collectively generated much
8 less than the estimated secured debt. Do you see
9 that?

10 A. Yes.

11 Q. And as you were -- you've been involved
12 in the representing -- you've been involved in
13 representing the debtor since you were employed
14 officially by the bankruptcy court, correct?

15 A. Yes.

16 Q. And you were -- so at the time that the
17 debtor was considering marketing the assets, were
18 you aware that the debtor hoped that the sale would
19 result in proceeds greater than the amount owing to
20 secured creditors?

21 A. I believe that Daniel Moses is the
22 correct party to answer these questions. But I know
23 that at the very least the former CEO anticipated
24 significant proceeds.

25 Q. You have been discussing today various

1 sale proceeds analysis and reports that you have
2 prepared.

3 During the time you have been working on
4 this case, the Cash Cloud case, for Province, have
5 you prepared any spreadsheets or worksheets that
6 anticipated a sale of the assets for greater than
7 the amount of the secured debt?

8 A. I don't recall if I've produced anything
9 of that particular nature. Is there something in
10 particular you can point me to?

11 Q. Not at this time.

12 If you could turn to page 10 of the
13 surcharge motion. Let me know when you're there.

14 A. Okay.

15 Q. If you could read the first four lines,
16 1 through 4, to yourself and let me know when you're
17 done.

18 A. Okay.

19 Q. So starting at line 2, the debtor in
20 it's surcharge motion states, first, under the
21 beneficial test a debtor must prove that its
22 expenses were reasonable, necessary and provided a
23 quantifiable benefit to the secured creditor. Do
24 you see that?

25 A. Yes.

1 Q. So as part of your analysis, did the
2 debtor specifically engage you to do an analysis
3 evaluating whether the fees and costs of the
4 professionals provided a quantifiable benefit to the
5 secured creditors?

6 MR. MANN: Objection to form.

7 BY MR. KINAS:

8 Q. You can answer.

9 A. Can you please restate your question.

10 Q. My question is, did you in your capacity
11 as vice president of Province, were you requested by
12 the debtor to prepare an analysis that looks at
13 whether the fees and expenses of the professionals
14 provided a quantifiable benefit to the secured
15 creditor?

16 MR. MANN: Same, objection to form.

17 BY MR. KINAS:

18 Q. And you can still answer.

19 A. Yeah, I believe these were conversations
20 with counsel --

21 Q. But --

22 A. -- of the debtor.

23 Q. But there is no -- there's no written
24 analysis of that; is that correct?

25 A. Not an independent written analysis, no.

1 Q. So if you could go to now your
2 declaration, which is Tab 3, Exhibit 2, and let me
3 know when you are there.

4 A. Okay.

5 Q. So if you could turn to Exhibit A which
6 is pages 8 of 11 and 9 of 11, let me know when you
7 are there.

8 A. Sorry, which pages?

9 Q. So this is Exhibit A, but if you look on
10 the top, it is labeled page 8 of 11 and page 9 of
11 11.

12 A. Okay. I'm there.

13 Q. So for the purposes of your declaration
14 and for -- on page 8, for the purposes of the
15 preliminary sale analysis, the preliminary sale
16 analysis is where you determined the total number of
17 machines, and then you determined how many were
18 collateral for Enigma, Genesis and AV Tech; is that
19 correct?

20 A. We put forth the debtor's best books and
21 reflection of who encumbered what collateral, based
22 on their books and records, though, that was not the
23 primary focus of the analysis.

24 Q. But on that -- as it relates to the
25 preliminary sale analysis, on page 8 of 11 on

1 Exhibit 2, at the end of the day, you concluded that
2 there were, for the purposes of your declaration,
3 5,706 machines; is that correct?

4 A. Yes.

5 Q. And as it relates to Genesis, you
6 concluded that if you look at the machines in the
7 warehouse and in the field, Genesis -- Genesis's
8 collateral totaled 2,855 machines; is that correct?

9 A. Yes, but that all amounts are estimates
10 and not guarantees of actual results on further
11 reconciliation.

12 Q. But for the purpose of what you filed
13 with the court as your declaration, that is what you
14 chose to use on that specific day, correct?

15 A. Yes.

16 Q. Okay. So now let's turn to the next
17 page, same exhibit, page 9 of 10, still of
18 Exhibit 2. Let me know when you're on page 9.

19 A. Page 9 of 11?

20 Q. Yes.

21 A. Yes, I'm there.

22 Q. So at the very end of that, you have
23 total adjustments to proceeds of the -- you have
24 2,098,214. Do you see that number?

25 A. Yes.

1 Q. All right. So let's start at the very
2 top where you have adjustments to lender proceeds
3 from warehouse costs. Do you see that?

4 A. Yes.

5 Q. And the total -- the subtotal for that
6 category was 518,000, correct?

7 A. Yes, with the caveat of footnote 1.

8 Q. Yes. All right. But for this purpose,
9 the number you chose to use there was 518,000,
10 correct?

11 A. Yes.

12 Q. And the way you allocated cost was
13 basically applying math, correct, you took -- you
14 used the total number of machines that were Genesis
15 collateral in a ratio of -- to 5,706 machines and
16 came up with a certain percentage, correct?

17 A. Correct, the charges to each secured
18 creditor for cost of storage or allocated as a
19 percentage of the total units in storage multiplied
20 by the total storage cost.

21 Q. Got it.

22 So you just used that mathematical
23 formula as it related to total warehouse costs,
24 correct?

25 A. Correct, for this analysis.

1 Q. For what you put before the court in
2 your declaration, correct?

3 A. Yes.

4 Q. And then second, on page 9 of 11, the
5 category that says sale-related costs, do you see
6 that?

7 A. Yes.

8 Q. And the adjustment subtotal -- although
9 it could grow -- for the purposes of your
10 declaration you used \$1,580,214. Do you see that?

11 A. Yes, subject to footnote 2.

12 Q. Correct. And again as part of your
13 analysis, you simply applied the same mathematical
14 formula that you did, as it relates to warehouse, as
15 to the costs allocated to Genesis; is that correct?

16 A. No.

17 Q. You didn't use the same -- you didn't
18 use the same ratio of -- if it was -- if we do the
19 math and Genesis has machines of -- has 2,855
20 machines out of the total of 5,706 -- let me check,
21 I think that's 50 percent, but let's do the math.

22 All right. If you believe my
23 calculator, the percentage of units attributable to
24 Genesis, in your declaration at page 8, is
25 50.03 percent.

1 So if you take me at my word at that, is
2 that the percentage you used on page 9 of 11 to
3 allocate cost to Genesis of the 518,000?

4 A. The warehouse costs were allocated based
5 on the percentage of the particular warehouse
6 machines, not of the total machines sold. The
7 sale-related costs, which include professional fees,
8 were allocated based on the total number of machines
9 sold, not just the amount of machines in warehouses.

10 Q. Understood.

11 So in the second category, sale-related
12 costs, of the \$1,580,214, you used the -- you
13 basically allocated 50 percent of that to Genesis;
14 is that correct?

15 A. The \$1,580,214 would have been allocated
16 to the secured creditors based on the total number
17 of machines, whereas the warehouses would have been
18 allocated based on the total number of machines in
19 the warehouses. Said more simply, if one of these
20 creditors did not have any machines in a warehouse
21 they would not be surcharged for warehouse costs.

22 Q. So if you run the math and you do
23 50.03 percent of \$1,580,214, you get 790,661. And
24 for -- as it relates to Genesis, is the number on
25 your report 790,661?

1 A. Yes.

2 Q. So you just -- when allocating the
3 costs, although you use different mathematical
4 formulas, you used the math related to the number of
5 units that you thought were collateral for the
6 lenders?

7 A. Correct. According to the debtor's
8 books and records.

9 MR. KINAS: Okay. That's all I've got.

10 MR. KISSNER: Jim, do we have anything
11 else?

12 MR. SHEA: No.

13 MR. MANN: Mason Higgins, do you have
14 anything else to add?

15 I don't have anything to ask him.

16 MR. KISSNER: Off the record.

17 (A discussion is held off the record.)

18 MR. KISSNER: Back on the record.

19 MR. MANN: So we would like to be on the
20 record to reserve our privilege to review the
21 transcript and file an errata sheet if there's any
22 corrections that need to be made to the answers that
23 were given.

24 MR. KISSNER: Off the record.

25

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

	108:3	\$780,651	174:7,19 177:5 179:2, 22 181:1,9
\$	\$30,500-a-month	166:20 167:5 172:3,8 173:5	11
\$1,580,214	95:14	\$781,000	10:11 16:3 35:22
233:10 234:12,15,23	\$38,600	166:23	36:24 54:6 66:4 75:6
\$1.2	108:2	\$8	78:20,21 124:22
177:6 178:7	\$4,675,000	79:6	140:11,18 148:20
\$1.4	183:2	\$921,000	230:6,10,11,25 231:19
174:8,18,23 175:3,10	\$4.675	173:9	233:4 234:2
176:10	182:18,23 183:13,20	\$921,061	1138
\$1.58	\$41,000	170:20 171:7,13,17	48:4
86:9 149:18,24	128:25	-	11:48
\$101,938.50	\$41,871.50		44:4 47:25
127:24 128:1	128:23 129:2		11:59
\$126,000	\$450,000	-arty	81:22 83:10
86:10	124:23 125:6,18,25	91:1	11th
\$128,373	131:22 132:3	1	80:14
128:11,13	\$5,221,473		12
\$142,000	69:1,13	1	10:22 19:17 21:15
144:7	\$5,328,167	8:8,9,10 34:6,9,15	79:10,11 171:3
\$142,003.44	72:21	35:2,12,17 37:10,11,	126,000
142:2 143:12	\$5,380,061	12 38:17 65:23 87:17,	89:22
\$187,750.50	73:5	21 88:3 164:20 165:12	13
131:1,3	\$5,989	185:17,18,19,20,21,22	11:6 21:14 79:22,23
\$230,000	130:2,4	189:20 228:16 232:7	80:6 171:1,4,8,18
86:4 92:5	\$5.2	1,651	172:7,23 174:6,18
\$245,000	69:4,15	204:18 205:4,8	177:5 179:2,22 181:1,
131:11	\$5.3	1.2	9 187:25 188:9,24,25
\$248,000	72:23 77:5	177:1	190:3 191:11,12
134:11	\$5.4	1.4	13-week
\$248,015	73:7,22	86:12 174:4	66:3,5,9,13 67:19,23
134:12 135:9 139:9	\$51,326.50	10	70:25 71:2,9 170:24
\$25,000	130:13,15	69:21,23 79:21 228:12	171:5 174:16 177:3
178:23 179:3,7	\$517,000	231:17	178:25
\$27,000	131:25 132:3	10(c)	13th
86:11	\$518,000	185:23 189:23,25	72:6
\$27,500	85:24 149:15,23	10,000	14
110:7,18 111:17 114:9	\$650,000	115:2	11:15 12:2 92:15,16
\$272,000	179:19,23	100,000	93:18 95:5,8 105:12
129:12 131:15	\$750,000	154:9	106:20 193:23,25
\$30,500	180:23 181:2,5,10	10th	15
		155:21 171:8 172:8,23	105:13 110:24,25
			123:24 124:4

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

<p>16 123:25 124:1 226:8,12</p> <p>17 126:7,8 127:7 132:8 156:8</p> <p>18 126:20,21 129:15 132:9 156:22 157:2 226:8</p> <p>18th 162:7,15</p> <p>19 120:19 134:21,22 157:16 224:25 225:2, 3,24</p> <p>1st 127:4</p> <hr/> <p>2</p> <hr/> <p>2 8:25 9:11 14:10,11 21:2 22:18 23:5 28:1 84:9 87:4 88:1 93:2 109:7 120:4 124:19 133:9 141:3 148:18 222:4,10 228:19 230:2 231:1,18 233:11</p> <p>2,098,214 231:24</p> <p>2,189 89:16</p> <p>2,368 197:1 215:19 219:20 220:5</p> <p>2,855 231:8 233:19</p> <p>20 142:20,21 143:17 158:3</p> <p>2022 80:14</p> <p>2023 26:3 42:2 55:13 67:15,</p>	<p>25 69:5 74:10 81:21, 23 82:4 126:16,17 127:4,5 128:3,15 129:4,18 130:6,17 131:5 162:7 190:2 225:24</p> <p>21 93:18 105:21 107:17 154:20,21 158:15 224:25 225:2,3 226:25</p> <p>22 33:6,7 94:7 95:6 106:16 156:9,10 159:1</p> <p>22,368 198:1</p> <p>23 67:15,25 93:21 156:22,23 159:13 226:25</p> <p>230,000 92:13</p> <p>2368 216:1,10</p> <p>24 14:7 105:10 157:17,18</p> <p>245,000 131:18</p> <p>25 92:14 105:20 107:16 158:4,5</p> <p>26 110:23 158:16,17 190:2</p> <p>27 142:19 159:2,3</p> <p>27,000 119:23</p> <p>27,500 109:18</p> <p>272,000 131:18</p> <p>28 134:20 159:14,15</p>	<p>29 39:19,21 160:15,16 162:1,13 193:25</p> <p>2nd 81:21 118:14</p> <hr/> <p>3</p> <hr/> <p>3 14:8,15 19:19,20 21:8, 13,15,17 22:17 23:5 30:9 84:8 94:10 109:6 116:11 120:3 124:18 133:9 141:3 148:17 185:19,23 222:3,10 225:19 230:2</p> <p>3,092 61:25 63:10 201:7</p> <p>3,127 215:11 216:1</p> <p>3,300 60:13</p> <p>3,301 60:3,4</p> <p>3,303 60:4,5 62:11,21 200:4, 15,20 212:7</p> <p>3,592 35:5</p> <p>3,676 61:6 63:15 64:10,12, 15 212:14</p> <p>3,677 35:10,12,13,18 38:5, 16 39:8 63:21 64:5,9 198:11,23 211:24 212:14 213:16 214:24</p> <p>30 161:8,9 162:5 188:4,5 194:22</p> <p>30(b)(6) 30:13,16 221:11,13</p> <p>30,500 95:13 106:22 107:8,13</p>	<p>30th 51:6 69:5 72:8,25 127:4</p> <p>31 161:7 162:5 188:6,7 190:21 191:17,24 192:4 194:23 201:10</p> <p>3127 216:11</p> <p>31st 126:17</p> <p>32 160:15 162:1 188:10, 11,22 190:3,9,13 191:6</p> <p>328 124:22</p> <p>33 154:19 221:2,17</p> <p>3303 63:4</p> <p>34 14:7 43:14 47:21 51:1</p> <p>341 125:1 126:2</p> <p>35 126:5 127:6 131:14 221:2,17</p> <p>36 126:18 129:14 222:7 224:7,9</p> <p>363 187:1</p> <p>3700 75:16,18,23 76:4,6,11, 19</p> <p>38,000 95:2</p> <p>38,600 94:17,20,24 97:18 106:18 107:9,14</p>
---	--	--	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

<hr/> 4 <hr/>	50 233:21 234:13	69:20 127:12 129:20 224:24	8th 81:23 82:5 83:10 84:1
4 29:16,17,19 31:11 32:22 36:19 38:11,15 109:7 120:5,19 133:11 141:5 222:10,13 225:19 228:16	50(c) 152:6	6th 69:17 73:9 74:20	<hr/> 9 <hr/>
4,675,000 182:16	50(c)(3) 143:7	<hr/> 7 <hr/>	9 65:7,8 66:24 71:3 79:9 109:11 117:1 120:5 133:11 141:5 148:20 222:13 230:6,10 231:17,18,19 233:4 234:2
4.1 154:9	50.03 233:25 234:23	7 16:3 23:7 39:22,23 40:14,23 43:8 44:19 47:12,17 50:3 59:21 65:5 66:25 109:11 126:16 140:15 194:1 200:1,2 225:18 226:8, 12,25	926 224:12
4.2 154:8	500 212:20 213:7 216:13 218:2	7,000 75:5 186:15,23	<hr/> A <hr/>
4/6/2023 40:11	506(c) 152:7 153:8 155:14 169:7 180:7 191:3	7,000-ish 186:21	a.m. 44:4 47:25
40,000 86:1 88:17	507 159:8,20	717 89:16 201:21 202:4,11	abandoned 54:16 55:3,23 186:25 187:23 193:6,9,11,13, 18,22 194:5,14,19 196:4 212:21 213:12, 18 215:6
406,000 121:2	512 195:20 196:3	721 120:25	abandoning 97:25
406,857 121:9	518,000 232:6,9 234:3	726 186:1	ability 3:11 177:23 184:3,8
408 189:6	53 207:24 208:6	750 173:5	absent 175:8
436 120:24	537 44:11 48:12 49:2 50:11 56:15,20 194:12	790,661 234:23,25	abstract 148:14
4K 86:2	55 212:21	7s 140:11	accelerated 118:7
<hr/> 5 <hr/>	550 213:7,11,17 215:5	7th 44:4 47:25 48:4 82:4 83:19,23	accepted 223:4
5 32:1,2,3,21 33:15,23, 24,25 34:7,10,15 35:2, 12,17 36:18	57 206:17,18,19 208:8	<hr/> 8 <hr/>	access 96:16,19,23 97:8,25
5,000 75:10	5700 75:11 76:6,15,19 187:9,13,22	8 43:15,16 47:22 49:16, 25 50:25 78:19 84:16 106:16 230:6,10,14,25 233:24	account 149:10 173:14 174:24 175:1
5,706 231:3 232:15 233:20	<hr/> 575 120:24	<hr/> 864 120:25	accounting 7:25
5.3 73:22	<hr/> 6 <hr/>		
	6 33:23 35:23,24 36:16, 23 37:3,12 38:9 42:2		

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

accretive 144:24 160:3 accruals 89:1 166:10 170:12 accrued 22:14 86:3 92:5 176:19 accuracy 142:4 223:18 accurate 3:21 4:2 21:22 22:3,6 24:9 25:14 28:12,18 41:17 42:5 116:16 152:5 162:17,23 163:11,16,21 174:12 186:18 190:14 192:8 200:10 210:24 212:8 224:3 accurately 198:11 achievable 136:8 achieve 138:6 acronym 48:17 action 2:7 activity 143:6 actual 45:15 71:14 85:4,19 94:12 105:25 106:8 107:11,12,19,24 108:3 163:1 231:10 actuals 71:6 add 13:24 129:9 131:8 235:14 added 129:11 131:10,15,25	additional 35:8 86:16 214:6 220:14 additionally 214:5 address 49:19 adequate 22:21 23:14,17,21 155:15 adjust 173:2 adjusted 172:13 181:12 182:21 183:3,7 192:13 adjusting 163:3 164:13 184:21 adjustment 22:22 147:9,10,12 153:7,16 154:5 211:14 233:8 adjustments 20:1 85:19 155:13,14, 15 183:4 189:7 197:22 231:23 232:2 admin 86:4 92:5 166:10 administrate 170:12 171:13 administrative 93:5,9,15 169:19 170:2,4,8,17 171:7 173:9 175:7 178:2 180:12 182:1 183:24 184:1,9 220:20 advisor 19:8 141:16 142:17 159:9,21 173:24 179:15 217:3 advisors 223:22 advocating 147:18	affect 167:6 affiliates 187:2 affirmative 13:19 42:3 50:1,5 76:13 afford 183:20 afternoon 116:5 221:5 agent 110:1 157:9 aggregate 89:5,8 218:12 219:15 220:7 agree 106:7 115:23 117:6 125:17 132:13 197:8 214:2,3 216:8 agreed 221:24 agreement 29:25 30:2,12 31:3 32:17,22,25 33:5,7,16, 20,25 34:6,10 36:17, 18 39:7 64:3,19 77:25 78:6,9 79:19 81:20,24 82:8 83:8,10,12,16,22, 24 94:11 110:5 193:21 198:10,22 199:11 219:13 221:23 agreements 54:9 78:3,16 agrees 80:25 81:10 83:10 ahead 117:2 157:6 218:17 aid 55:2 170:5 aiming 35:20	aims 36:14 Albeit 197:24 alleged 94:21 97:2 alleging 107:11 allocable 147:16 allocate 87:14 88:19 149:6,8 153:2 234:3 allocated 88:9,24 89:1,3,4,10,24 90:2,11 148:3,7,8 149:24 150:20 153:6 154:2,4 197:25 202:7 218:15 232:12,18 233:15 234:4,8,13,15, 18 allocates 87:5 88:6 149:5 150:2, 16 allocating 235:2 allocation 23:1 88:1 90:13 147:19 151:4 152:4,12 154:9 165:25 196:18 197:15,20 218:25 allocations 219:14 allowed 96:23 98:4 176:3 aloud 49:17 alternative 96:11 97:24 amount 11:17 24:14 34:14 68:22 86:8 87:8 89:5 91:24 94:14,16,21
--	--	--	---

Tanner James

In re: Cash Cloud Inc.

<p>97:18 103:6,13 113:10,19 117:21 122:11,15,18 123:2 127:21 128:9,21 130:1,11,24 136:7 138:10,14 144:23 145:2 146:17,21 149:14 166:17,19 167:21 170:19 172:3 174:2,3 176:24,25 178:21,22 179:18 180:21 182:10 183:12 187:23 222:17 223:18 227:19 228:7 234:9</p> <p>amounts 18:2,10,15,16,18,19 19:2,14 24:19 29:3 85:3,18 86:4 91:18 96:17 106:3 129:9 131:8,15 146:5,18 162:25 181:11,20 190:16 231:9</p> <p>analyses 47:17,18</p> <p>analysis 9:15,20,22 10:3,4,8,9, 13,16,17,24 11:2,7,10, 19 12:7,8,9 16:11 17:2 18:23,24 19:7,10,12, 25 20:5,9,13,14,21 21:7 22:19 23:2,10,14, 18 28:1,7,12,17,20 29:5 30:17 31:21,25 33:21 34:11 37:8 42:16 45:2 47:8,11 62:6 74:15 84:21 85:1, 16 87:4,18,21 88:5 89:6,18 90:20 91:20 92:10 94:25 95:15 99:8,16,21,23 100:10, 20,22 101:5,22,25 102:1,12,13 104:2,14, 16 109:22 111:25 112:2,13 113:23 115:7 116:19 117:15,19,24 118:5,8 120:10,16 121:6,25 122:20 123:7,20 133:18</p>	<p>134:6,10 136:22 137:1,25 141:8,24 144:3,16 145:5 146:1 148:2,15,16,19 151:20 152:10 153:8,9,15,25 155:20 156:5,20 157:14 158:1,13,24 159:11,23 160:2,21,24 162:12 163:2,8,19 164:5,10 170:1,23 177:7 179:9 186:3 189:5 190:1,4 191:2 194:13 196:10 197:23 201:7 202:3,6 203:9 205:1,3,6 206:24 209:3 211:11 215:18 218:10,12,20,25 219:10,15,19 220:5 228:1 229:1,2,12,24, 25 230:15,16,23,25 232:25 233:13</p> <p>analytics 5:12,25 25:10 172:15</p> <p>analyze 100:2 101:4 112:7 115:5 136:1 143:20</p> <p>analyzed 99:8,17 100:8,13,20 112:1 137:24 184:16 185:1</p> <p>Andrew 2:5 44:5 51:6,9 52:1</p> <p>Angela 111:6,7,12</p> <p>answers 235:22</p> <p>anticipate 3:16</p> <p>anticipated 226:14 227:6,23 228:6</p> <p>APA 208:20</p> <p>apologies 93:10</p>	<p>apologize 21:15,17 60:5 61:1 83:3 96:4 118:2 127:13 129:16 193:24 194:2 212:5</p> <p>appeared 49:3 60:10 62:23 129:17 144:6 194:11 212:25</p> <p>appearing 8:21 118:21</p> <p>appears 31:3 32:17 33:9 35:17 40:3 43:21 56:9 79:4, 18 92:21 93:13 94:12 106:6 124:17 127:8 157:4 195:23 198:6 199:10 201:23 205:22 206:16</p> <p>applicable 81:3,12</p> <p>application 12:10 93:5,9</p> <p>applications 86:15 143:24 177:10, 18</p> <p>applied 233:13</p> <p>applying 232:13</p> <p>appoint 138:23</p> <p>appointed 13:17 140:25</p> <p>appointment 138:18</p> <p>approval 93:10,15 99:12 113:7 117:25 139:19</p> <p>approve 70:14 225:23</p> <p>approved 98:4,19 103:4 112:15</p>	<p>113:1 121:23 122:7 226:4</p> <p>approving 92:25 124:15</p> <p>approximately 60:13 69:15 72:23 73:7 76:4,11 86:9,11, 12 97:18 109:17 110:18 111:17 121:2 131:11 134:11 142:2 166:23 196:3 211:23 215:11 218:2</p> <p>April 33:6,7 42:2 44:4 47:25 48:4</p> <p>arbitrary 192:20</p> <p>area 5:15 140:3 142:14</p> <p>areas 5:15,17,19</p> <p>arising 81:3,12</p> <p>ASAP 155:8</p> <p>ascertained 50:2</p> <p>ascribed 211:13</p> <p>aspect 23:2 25:1</p> <p>assert 32:24 46:23</p> <p>asserted 96:17 199:3</p> <p>asserting 208:3</p> <p>assertions 213:22</p> <p>assess 164:1</p>
--	---	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

assessment 9:15 10:13,24 11:7 30:17 asset 125:1,7,20 126:3 209:14 assets 85:12 136:14,16 137:9,18 147:8,13,16, 20 148:4 152:4 153:17 154:3,15 164:23 165:25 176:16 183:25 225:12 227:17 228:6 assist 15:14,19 20:15 164:9 assistance 56:1,7 66:14 assisted 121:22 associate 7:3,9,13,15 assume 2:10 4:10 59:18 62:25 63:1,13 75:20 78:13 118:13 214:16 216:14 assumed 203:9 assumes 205:3 218:20 assuming 42:9 63:6 68:6 74:5 75:15,25 76:2 77:7,9 83:15,21 196:6 200:9, 18 206:9 211:22 212:8,12 assumption 75:23 166:22,25 202:4 203:12 205:1,5 212:10,17,18 214:21 215:19 219:20 assumptions 163:4,7,11,13,20,24 164:13,17,18,25 165:11,17 171:10	172:21 173:1 174:11, 14,16 175:13 177:13 179:5,25 184:21,23 192:12,15 214:10 215:15 ATMS 34:22 38:16,21 attached 21:9 22:19 24:2 38:18 44:14 48:4 49:25 161:18 attempt 60:12 103:12 113:9,18 117:15,20 122:18 138:10 145:1 153:22 196:18 203:18 209:19 attempted 28:4 104:1 123:6 attempts 196:20 attendance 124:25 125:7,20 126:2 attention 119:23 224:6 attorney 94:2,3 attorneys 94:4 157:9 178:11 attributable 233:23 auction 118:12,14,16,17,22 187:2 225:12 226:20 authorizing 14:21 70:7 124:12 automatic 70:10 AV 45:16,22 46:6 75:25 85:9 115:17 118:5 150:9 190:11 230:18 avenue 175:6	avenues 176:15 AVT 14:23 117:17,23 aware 28:22 74:13 105:3 145:15 156:7 216:16 217:14 225:15,22,24 226:2,3,18 227:18 awareness 218:9 Awesome 116:7 awkward 3:18 <hr/> B <hr/> back 23:4,6 30:21 33:13 44:24 45:7 47:20 59:21 62:14 66:23 82:13 84:8 106:15 107:16 109:6 115:15 116:10 120:2,4 125:13 127:6 133:8 137:2 141:2,4 146:12,25 148:15 161:7 189:20 190:20 194:22 196:9 198:16 208:10 209:24 211:18 215:23 235:18 backing 186:8 backup 224:2 baked 172:21 balance 68:15,18,24 69:11 72:18 167:9 187:21 ballpark 76:15 bankruptcies 140:7,11,18,21,24	bankruptcy 13:18 52:5 66:4,10 82:3,7 83:18 110:2 138:21 140:15 169:16 173:20 184:12 186:14 187:4 216:7 227:14 bar 170:5 based 35:5 38:20 39:3 50:10 57:16,24 62:10 63:3 64:20 68:1 71:14 73:18 85:8 86:19 88:2 89:1,4,14 90:1,2,7,8, 13 101:12 107:4 109:14 114:24 120:23 121:14 142:12,15 143:13 163:21 183:7, 22 198:1 199:15 202:8 203:12 207:11 208:7 213:8 214:10 215:19 216:9,10,11 230:21 234:4,8,16,18 bases 202:3 205:4 217:14,25 basically 232:13 234:13 basics 53:15 basis 28:6 57:3 94:22 Bate 127:13 129:16 Bate-stamped 38:10 Bates 16:3 bear 106:1 began 26:12 begin 5:3 26:8
--	---	--	---

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

beginning 9:11 38:15 68:14,18, 24 69:11 72:18 73:10 75:5 120:22 171:8 172:8,23 174:7,18 177:5 179:2,22 181:1, 9 214:25	Berger 156:18 158:10	80:23	97:7 187:11 211:13
begins 23:7	bid 196:18	bottom 9:11 38:11 93:21 105:21 128:18	<hr/> C <hr/>
behalf 93:11	billed 157:23	Brazil 164:20 187:3,23	calculator 103:23 104:2 233:23
believed 50:18,20 60:10	billing 136:25	break 4:20,24 39:12,13 64:25 109:4 115:13 119:11 163:5 185:12	call 116:15 224:15
believes 85:8 175:5	binder 8:7 14:9 19:17 29:17 35:22 43:15 47:22 65:5 69:20 84:9 92:15 116:11 126:6,19 142:20 185:21 187:25 188:5,10,23 222:2	breaks 4:19 85:20	called 6:1,4 201:13
bell 75:12	bit 24:24 29:9 123:22 130:8 164:16 166:13 175:22,24 185:16	broad 87:12 104:23 142:6	Calls 25:4
belonged 58:17	Bitaccess/bitcoin 164:22	broadly 177:20 178:3 186:22	cap 124:23 125:18,25 132:18 133:1
belonging 57:6 64:14 85:9	blank 207:8	broken 116:15,20	capacity 145:18 229:10
beneficial 228:21	blanket 46:3,17,19 154:14 203:10 220:21	broker 91:1 94:13 108:15	Capital 159:8,20 187:2,7,12
benefit 11:8 82:24 98:15 100:14 101:19 103:1, 20 104:11 113:3 117:23 118:4 123:6 137:8 138:6 144:7,22 153:19 167:25 176:17 228:23 229:4,14	blue 71:5,12	brokered 97:4	capped 125:5
benefited 98:1,5,10,19,24 99:9, 22 100:3,21,24 101:24 102:6,14,18,22 103:7, 13 112:1,7,17,25 113:10,19 121:17 122:1,11,19 123:3 136:2,6 137:25 138:11 144:17,23 145:2	book 196:10	brokers 108:8	capture 202:23
benefiting 123:12	books 61:13 90:9 196:6 200:9 201:9 204:22 205:23,25 206:9,24 207:16 209:15 214:7 216:5 217:10 230:20, 22 235:8	brought 119:22 178:1	carve-out 173:21
benefits 104:5 117:16	borrower 78:8 79:7 81:24 83:9, 15,21	buckets 196:18	case 5:25 6:9,18 47:3 54:6 114:25 117:22 125:5 133:15 135:10 138:19 141:15 143:24 145:15, 22 147:16 156:3 169:5 183:8,13,17 186:9,23 193:7,14,18 194:6,15 196:5 210:7 212:22 213:12,18 214:25 215:6 218:9 228:4
	borrower's	bulk 216:8	cases 66:10
		burden 106:1	cash 2:8 8:17 30:3 36:7 46:4,15 66:3,5,7,9,13 67:19,24 68:8,10,12, 13 70:25 71:2,9 72:3, 12,14,23 73:13,18
		burdensome 53:3,20,25	
		butcher 93:11	
		buyer	

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

<p>74:3,5,9,18,24 77:1,7, 9 79:7 92:23 127:18 128:2 129:24 130:5 164:8 167:9,21 169:23 170:14,24 171:5 173:6,8,9,12 174:16 176:6 177:3 178:25 221:13 228:4</p> <p>categories 116:24 132:14 151:5</p> <p>category 121:14 173:20 232:6 233:5 234:11</p> <p>caveat 232:7</p> <p>caveats 172:14,19 174:15</p> <p>cc'd 43:24 143:4 161:15</p> <p>CC_0000026 38:10</p> <p>CCID 60:16,19,24 61:1,19 63:13 64:13,21 75:15, 21 204:3 212:12 213:15 216:11</p> <p>CCIDS 61:16,18 75:19 199:15 212:2</p> <p>CCOS 27:2</p> <p>cell 59:25 61:3,16,21 194:3 200:3 201:20 204:15</p> <p>Central 8:2</p> <p>CEO 27:19 105:6 227:23</p> <p>certainty 35:14 164:14</p> <p>certificate 123:21 223:8</p>	<p>certificates 177:11</p> <p>chain 44:16 135:2</p> <p>challenge 216:17,21 217:3,15,25 219:9</p> <p>challenging 220:13</p> <p>change 24:23 28:17 38:20 40:8 42:15 85:2,17 86:5 149:22 167:10 192:23 196:16 202:7,8 204:3</p> <p>changed 18:17,19 24:15,19,20 40:10 41:18 43:13 59:11 167:3</p> <p>Chapter 54:6 66:4 75:6 140:11, 15,18</p> <p>characterize 10:2 45:16 65:19 172:25 173:1 197:18, 19</p> <p>characterizing 165:15</p> <p>charge 86:24 108:7</p> <p>charged 95:21 97:17 98:2,24 102:6,17 105:7 156:6</p> <p>charges 86:18 95:12 97:21 99:9 106:8,22 107:7, 12,13 108:1 148:24 232:17</p> <p>charging 108:10,19 133:5</p> <p>chart 84:24 85:14 87:4,17, 20 88:14 89:21 92:2 148:20 149:5,21,22</p>	<p>150:2,11,16,20 151:12</p> <p>charts 148:19</p> <p>check 132:10 208:2 233:20</p> <p>checking 61:9</p> <p>chose 231:14 232:9</p> <p>Chris 27:15,18 82:19</p> <p>Christopher 67:9</p> <p>circumstances 108:24 195:6</p> <p>circumstantial 78:13</p> <p>CKDL 65:16,17 67:8 156:2,6 157:10,23</p> <p>claim 28:24 45:23 46:1 76:1, 3 82:25 86:4 92:5 93:5,9,15 105:1 107:19 143:7 165:23 166:14 169:14 171:25</p> <p>claimed 47:4</p> <p>claims 70:9 107:2 109:16 110:1 165:24 166:23 169:20 170:3 176:17 178:2 180:13 182:1 183:24 184:1,9 220:20</p> <p>clarify 6:10 15:15 16:18 19:11 45:5 88:10 117:18 122:22 137:4 150:23 157:2 182:12 186:10 220:4</p> <p>class 178:2 180:13 182:1</p>	<p>clean 4:2 25:12</p> <p>clear 3:21 15:4 58:19 101:18 104:6,8 201:18 204:12 205:16</p> <p>client 29:11</p> <p>clients 5:23</p> <p>climate 91:15</p> <p>close 25:13 43:12 64:9 178:9 181:15</p> <p>closer 128:17</p> <p>Cloud 2:8,9 8:17 12:22 13:1 27:19 29:15 30:3,14 31:4,5 32:18,20 36:7 53:6 79:7,17 92:23 108:14 124:16 157:24 221:13 228:4</p> <p>Cloud's 30:10 66:4</p> <p>code 127:14 129:21</p> <p>Coin 2:9 12:22 13:1 27:19 29:15 30:3,10,13 31:4, 5 32:18,20 53:6 66:3 79:16 108:14 124:16 157:24</p> <p>Cole 164:23</p> <p>collaborate 145:15</p> <p>collaborated 145:23</p> <p>collaborating 145:25</p>
--	---	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

collateral 9:16 10:14 14:22 16:12 20:3 27:8 30:11, 18 32:19 34:2,3 37:19, 23 38:11,15 44:10 48:6,8,9 49:1,6,14,22 50:8,12 52:3 54:25 55:3,15,23 56:2,8,11, 12,24 57:2,3,6,10,21 58:7,11,23 59:8,14,15, 17 60:12 62:22 63:9, 14,21 64:5,20 75:16, 22 77:14,17,22 78:11 82:17 87:2,10 95:18, 20,23 96:8,19,24 97:3, 15,22 98:4,20 128:2 130:5 184:6 193:5,9, 13,17 196:20 197:9 198:2,12,23 199:3,6, 21 200:7,18,25 201:6 206:7,20 210:7,20 211:4,19 212:8,11,13, 15 213:3 214:17 215:1 217:9 218:21 230:18, 21 231:8 232:15 235:5 collateral/dip 127:18 129:24 colleagues 37:21 41:2,8 collect 4:21 171:22 177:23 194:20 collectability 180:9 181:23 collection 183:24 collections 176:4 collectively 227:7 College 8:2 column 35:5 68:7,18,23 69:8 71:12 72:11,18 73:2	165:1 195:15 205:18, 22 206:6,12 207:2,5, 13,20 209:24 210:13 columns 68:17 195:10,13 201:16 204:10 205:15 combination 222:21 comfortable 175:14 193:3 213:22 commenced 83:19 commencing 81:21 comment 151:15 comments 16:19,21,25 17:5,6,7, 11,14,19,20,23,25 18:5,22,25 33:4 71:20 150:12 committee 13:12,16,17 17:9 18:5, 22 20:23 133:25 136:11 137:20 138:19, 23 139:2,5 140:25 141:16,17 142:17 145:19 153:14 164:1, 5,9 189:10 216:16 217:2 218:7 219:8 220:12 223:10,12,22 committee's 17:15,23 19:8 164:6 216:24 217:15,25 common 66:9 communications 109:15 142:16 143:14 146:4 company 40:19 41:4 44:5 57:17, 18 77:25 78:4,16 91:1, 14 94:5 105:4 168:15, 20 187:21	company's 52:2 94:3 97:12 173:14 compare 26:12 comparing 22:9 23:2 43:3 compensation 124:24 125:25 competent 195:8 complete 3:5 completely 184:13,17 192:20 completing 37:7 complexity 213:23 complicated 207:17 comport 52:16 53:23 computer's 204:4 concept 168:5 170:25 concepts 100:9 concern 55:18 concerns 52:1 211:1 concise 191:14 conclude 62:16 68:1 112:13,16 concluded 231:1,6 conclusion 32:24 52:9,20 63:1	75:22 112:23 115:9 122:6 123:11 136:4 138:5 144:21 177:19 214:2 conditional 79:5 80:8 81:1 conditionally 81:1,10 conditions 80:24 conduct 40:17 145:7 conducted 10:16 145:8 conferred 117:17,22 confess 68:3 confirm 19:4 205:7 confirmation 121:15 conflict 26:23 160:12 confusion 55:13 84:20 Congratulations 6:24 conjunction 221:25 connect 196:19 connection 6:2 12:15 32:25 122:2, 12,19 124:24 125:19 126:1 128:1,13 129:2 130:4,15 131:4 140:15 160:9 consensus 174:13 consented 138:20
--	--	--	---

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

conservative 213:11	contradicted 63:7	152:1 153:21 157:2 164:5 165:16 169:21 170:3,4 172:4,5 173:7, 10 174:19 181:5 186:19 194:15 196:7 198:2,5,12,24 199:12, 17 200:19 201:1,4 202:5,24 205:5,10,11 206:10 209:11 211:23 212:15 213:8 214:1,16 215:1,7,20 218:22 219:21,24 220:3 223:14 224:8 225:12 227:14,22 229:24 230:19 231:3,8,14 232:6,10,13,16,17,24, 25 233:2,12,15 234:14 235:7	118:7,8 119:25 146:7 147:6 148:8 149:2,6,8, 11,14,18 150:2,16,20 151:4,25 152:12,22 153:2 154:3,4 166:10 190:12 202:7 209:20, 21 218:13,14 219:1,15 222:18 223:5,13,24 229:3 232:3,23 233:5, 15 234:4,7,12,21 235:3
conservatively 215:5	controlled 91:16	corrected 24:22	counsel 4:14 5:12 13:23,25 15:9,12,13,19,23 23:20 37:21 49:13 57:12 66:14 71:21,22, 23 72:2 85:3,18 102:3 104:18 105:18 110:14 115:1,17,21 119:14,15 120:25 121:15,22 124:14 125:11 132:21 133:25 136:11 137:21 145:9,10 154:17 157:10,12 160:6 176:3,20 180:19 189:13,14,16,17 191:20,24 195:5 197:8 203:8,13,17 208:20,24 214:11 221:24 222:16, 23 223:10,12 229:20
considered 99:17,21 101:9 102:2, 13 176:5	conversation 3:16 63:25	corrections 235:22	count 24:12,16 28:13 60:9 85:7 183:1 194:10 195:23 196:20 201:23 206:11 220:8
consisted 63:21	conversations 37:21 48:20 49:13 57:12,17 60:18 102:2 104:3 105:6 145:9 176:4 177:17,22,25 202:15 229:19	correctly 148:1 156:18	counsel's 33:4
consistent 26:21 207:17	Conversely 4:9	correspond 145:20	counted 18:1 217:12
constituted 193:13 206:7,20 210:20	copy 19:4,7 155:20 224:8	corresponded 146:2	counting 35:3
constituting 198:23 210:6 211:3	corner 93:19	correspondence 94:15 154:24	counts 88:2
consultation 137:21 145:20 160:8, 10,11	corporate 5:16 53:1,18 111:8 140:4	cost 99:23 100:13 108:15 153:5 177:19 232:12, 18,20 234:3	couple 2:8 4:6 92:6 115:18 128:5 221:7 222:3
consulted 225:11	correct 2:18 6:15,16 7:5 13:18 21:5,6 23:9,11,13 26:4 27:12 28:14 31:9 33:17 35:18 36:24 37:4,16 40:12,23 42:14 45:9,24,25 46:17 47:5,6 50:4,8 56:16 57:22 62:22,25 63:5,11,12,16,17,22 64:5,14,16 71:10 75:24 77:10 83:12 84:13 87:7,16 88:7 90:21 91:20 93:7 95:15,16 96:9 97:19 99:18 100:10,14 103:22 104:12,20,21 105:18 106:4,23 112:2,5 115:1 116:22 120:10 121:11 127:10 129:18 133:20,22 134:8 138:1 141:9,20, 24 143:15 149:7,16, 20,25 150:3,4,6,8,9, 10,18 151:5,6,7,8,13	costs 10:25 11:9,17 16:12 17:20,23 18:1 23:1 34:14 85:20 86:8,12, 19,21 87:1,5,8,13,14 88:6,8,11,15,23,25 89:5,9,18 90:20,22 92:7,9 98:3 100:21,25 101:12,24 102:13,17 108:3 111:13 112:2 114:9,24 116:15,16, 20,21 117:7,11,12	
Consulting 141:12			
contents 15:11 208:21			
context 15:4 34:23 51:21,24 52:5 54:18,22,24 55:6 83:13 106:12 125:22 180:12 181:19,25 208:12			
contingent 28:20 29:1,6 107:23 184:4			
continue 40:12			
contract 52:12,17,18 54:1 92:23 128:6,14 130:9, 16 132:16			
contracts 53:3,21 54:5 92:25			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

court 3:13 4:2 6:5,18 8:9 103:4 126:6,19 132:25 140:11 173:15 198:6 227:14 231:13 233:1	current 5:4 21:25 54:6 148:11	31:8,14 37:16 38:3,23 39:8 40:12 43:4 45:9, 11 46:24 47:5 48:21 50:18 52:17 54:5,8,11 60:9 70:7,15 71:23 72:2 74:21 75:3 82:2 85:8 89:7 90:22 94:16, 22 96:19 97:17 104:20 106:3 108:11,20 110:5 114:2,4,7,9,11 120:25 121:22 123:16 133:16, 17 141:19 145:10 161:1,2 163:25 167:20 169:20,22 171:12,22 172:7 173:4,23 174:6 176:16,20 177:4 179:1,21 180:25 181:8 183:25 184:8,13 186:14 191:20 193:2,6 194:18 195:25 202:16 210:6 225:11,23 226:3,12 227:5,6,13, 17,18 228:19,21 229:2,12,22	debtors 53:2,19
courts 197:8	cut 90:5 118:1		decided 26:10
covers 177:21	D		decisions 214:3
Crane 67:9	Dachelet 13:24		declaration 10:3,8,17 11:2,10,19 12:6 14:20 15:1,8,16, 19,20,25 16:8,14,17, 22 17:5 18:7 21:2,4,10 22:19 23:25 24:2,6,8, 17 84:12,16 109:8,12 116:12 117:2 120:3,5, 20 133:8 141:3 222:4, 9 230:2,13 231:2,13 233:2,10,24
Crane's 67:11	Dan 16:1 118:16,20 119:3 136:19		decom 205:13 206:1,3
create 15:7 16:13 20:8,10 40:14,17 41:8 104:15	Daniel 13:9 226:24 227:21		decommissioned 206:4,8,21 207:7,12, 21 208:11,18 209:2,7, 10,13,21
created 20:14 41:24 42:1 47:10 67:20 190:9	data 40:17,22 41:3,5 52:2 56:10 71:14	debtor's 13:18 25:17,20 26:9, 17 27:2,6,8,11,16 31:19 34:4 38:7 41:21 45:3,24 46:10,13,20 49:10 50:16 55:8 57:14 58:14,18,20 61:13,18 62:4 63:4 65:18 66:7 68:12 69:4, 16 72:15 75:17 80:4 85:11 91:2 100:14,16 105:17 109:16 120:8 124:13,25 126:1 136:14,16 137:18 162:25 168:12 171:14 183:25 184:17 186:9 189:16,17 191:23 195:25 196:6 200:9 201:9 202:1,14,19 204:22 205:23,25 207:16 209:15 213:1 214:7 216:5,25 217:10 220:9 222:16,23 227:5 230:20 235:7	decom 205:13 206:1,3
creating 104:13	date 25:22 40:11 67:14 68:19 73:3 80:13 81:23 83:25 124:14 155:8 161:6 162:5 189:19 213:17		decommissioned 206:4,8,21 207:7,12, 21 208:11,18 209:2,7, 10,13,21
Credit 65:16,17 156:2 157:23	dated 33:6,7 44:4 48:3 190:2		decreased 18:17
creditor 29:15 86:19 114:25 203:2 228:23 229:15 232:18	dates 67:12 226:6		deemed 201:4
creditor's 137:20 138:18 139:5	David 13:24		default 81:4,13,23,25 82:1 83:9,16,22
creditors 13:17 125:1 126:2 134:1 140:24 141:16 142:18 165:18 219:13 227:20 229:5 234:16, 20	day 34:20 125:6,19 155:13 231:1,14		defer 104:24 110:4,13 132:20 176:2 220:18, 22 226:21
creditors' 13:11,15 125:7,20 136:11 138:23 139:2	dba 30:3		defined 30:11 33:5 81:5,8
cryptocurrency 31:6 38:16	DC's 144:24		degree 7:24
currency 34:21,23	DCMS 34:21 118:7 186:23		demanding 96:17
	debt 227:8 228:7		demeanor 119:19
	debtor 2:10 9:1,5 12:1 13:23 14:22 25:11 26:19,24		denied

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

185:2	details 104:25 217:11	direct 114:2 123:16 138:17, 18,24 139:4	discussed 104:17 113:24 133:18 151:22 161:19 165:24 180:6 192:11 198:9,21 199:1,8,10 211:22 212:6,13,19 215:9,15
dense 148:13	determination 135:12,18 143:12	directed 114:8,12 123:17	discussing 63:20 64:4 115:20 202:15 212:24 227:25
departments 26:19	determine 47:8 88:8,22 110:17 121:13 134:14,16 142:10 175:14 223:17 224:3	direction 211:6	discussion 33:12 115:14 180:9 185:10 221:1,14 235:17
dependent 184:9	determined 137:13 139:8 198:5 230:16,17	directionally 186:19	discussions 12:21,25 13:4,10,20 97:10 105:7 175:19,25 222:22
depending 184:23 212:19 213:5 217:12	determining 111:17	directly 53:7 61:9 138:22	disposition 186:11
Deployment 85:25 88:16,20,23 95:24 96:3 105:8 108:17 117:8	develop 15:9	director 86:6 111:8 178:18 179:3	dispute 28:25 96:21 97:1 104:20,22 105:3 107:14,23
deposed 2:19	developing 153:15	director's 179:7	disputes 29:7 87:9 97:12 107:1 198:7 219:2
deposition 4:19 8:17,22 9:12 101:2 119:20 185:22 189:21 190:5,8 221:12,13	development 17:2 19:14 217:21	disagree 50:14	distinction 24:1
depositions 221:11	differ 7:9	disagreement 146:20,24	distributed 90:7
Depot 164:22	difference 101:8 122:23 175:16 216:9	disbursed 173:13	distribution 85:6 196:17
describe 5:8,22 8:15 17:18 22:5 27:1 29:24 30:5 31:1 32:8 36:4 43:20 54:21 65:14 67:6 101:19 111:10 124:11 155:4 189:3 216:20	differences 193:1	disbursement 166:9,15 167:9 169:11 170:11 172:1	distributions 165:18
describing 31:13	differentiate 209:20	disbursements 66:8 167:15,18,19 170:8,17 171:7,13 172:9 173:9,20 182:13	divide 76:6,19
descriptive 191:14	differently 50:20 61:17 153:19	disclose 86:17	DLI 165:23
descriptors 207:7	difficult 104:7	discovery 12:14	docket 120:24 177:10
destruction 85:23	digital 34:21,23	discrepancies 27:6,7 56:10 216:4	document 8:13 14:17 16:24 19:22 20:4 21:5,16
detailed 190:12	DIP 45:18 46:8,9,11,25 65:16,18,20,21 70:14, 21,24 71:17 128:2 130:5 132:16 156:3 157:9,10 159:9,21,25 160:8	discrepancy 216:1,15	
		discretion 163:3 164:13 167:1	
		discuss 176:4 225:14 226:1	

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

23:7,9 24:7,8 29:21,23 30:6 31:2,16 32:5,9 33:8 36:1,2,13 40:2 41:9,16 43:18 62:11, 20 63:3,9,15,18 65:12, 24 70:3 78:23 79:1,3, 13,25 80:6 83:14 92:18,20 93:13 104:4 106:5 111:2 117:24 124:7,9 125:23 126:11,23 134:24 142:25 148:14 152:17, 19 154:23 155:12 156:14 157:1,20 158:7,19 159:17 160:18 161:11 162:16, 24 164:19 186:1 189:1,11,12 190:17,23 191:9 197:13,18 224:12,13 226:5	47:11 113:24 150:14 drawn 24:1 drugs 3:8 due 146:21 155:7,9 duplicating 42:22 <hr/> E <hr/> e-mail 43:21,25 44:16 49:16 51:5,9,12,16,19,22,25 53:13,15 54:18,22,23 55:2 56:1,6,9 94:14 109:14 111:5,10,16 135:2,5 142:15 143:3, 13,17 144:4 154:24 155:5 161:14,17 162:6 171:12 222:17 223:11, 22,25 e-mails 222:14 earlier 21:1,3 23:5,24 43:2 63:20 83:8 120:7,9 137:8 146:25 148:1,23 149:1 150:13,14 165:24 186:13 187:4 192:11 223:11 earliest 81:22 early 26:13 163:24 easiest 219:3 easy 29:18 188:2 edit 16:16,18,21 edited 16:24	effective 124:14 efficiency's 221:25 elaborate 147:4 elements 82:25 employed 101:21 117:13 227:13 employee 140:21 employees 12:24 13:1 27:16 40:19 41:4 48:21 57:17,18 60:18 202:16 employer 5:4 employment 12:11 110:5 124:13,16 encumber 34:13 encumbered 58:17 59:20 98:21 193:10,22 230:21 encumbers 57:2 87:9 90:8 encumbrance 62:17 end 48:6,13 181:13 182:10 184:11 208:16 231:1, 22 endeavoring 104:10 ended 73:8 ending 69:5,17 72:24 74:19 183:8 ends 197:23	engage 229:2 engagements 6:2,5 English 70:14 81:6 Enigma 2:6 6:15 8:16 11:8 12:14 14:23 19:12 29:10 30:4 31:4,7,13 32:18,19 34:2 36:7 37:15 38:25 42:10 43:11 44:8 45:8,23 46:5 49:7 50:22 55:17, 22 56:24 57:1 61:10, 19 62:12 64:14 74:1 75:24 76:11 77:2,4,13, 16,21,24 78:3,16 79:7, 16 80:16 81:7 82:7,18, 20,23 83:10 85:9 88:6, 9,20,24 89:10,25 90:11,15 98:1,5,7,10, 18,23 99:9,13 100:17, 21,23 101:24 102:5, 14,18,22 103:1,3,7,13, 20 104:11 112:5,7,17 113:10,19 114:1,3,4,6, 8,12 121:16 122:1,11, 19 123:3,15,17 132:24 136:1,6 137:8,25 138:11,17,18,20,22,24 139:1,4,7 144:7,13,17, 22 145:2 150:5 152:13,21,25 153:2,6, 20 155:13 166:15,22 167:9,13 168:24 169:12 172:1,9,23 173:5,10,13 189:9 193:9,18,20,21 194:5, 19 196:4,23 197:5 198:1 201:7 205:18,24 206:12 207:12,23 215:6,20 217:5 218:1 230:18 Enigma's 8:9 21:1,8,16 30:10 34:3 37:24 38:2,22 39:9 44:12 48:9,13,25
---	--	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

<p>49:3,6,21 50:7,11 52:2 54:24 55:2,14 56:8,21 60:10 62:5,22 63:5,11, 16,21 64:5,20 74:10, 19,24 75:17,19,21 76:4,8,21 89:16 123:6, 12 193:13,17 194:11 196:15 198:12,21,23 199:3,21 200:7,18,21 201:5,25 202:5 204:23 205:4 206:20 210:6,20 211:3,19,24 212:7,15, 21,25 213:2,16 215:1, 12 216:12,17 217:15, 16 218:21 219:20 220:8,13 221:23</p> <p>entered 39:7 77:24</p> <p>entire 15:17 184:11</p> <p>entirety 185:3 223:3</p> <p>entities 117:17 151:5</p> <p>entitled 165:1 166:9 186:1 194:24 196:10 197:6 204:7 205:13 207:3</p> <p>entry 14:21 92:24</p> <p>errata 235:21</p> <p>escrow 173:14 174:24 175:1</p> <p>essentially 90:7 165:6</p> <p>establish 136:21</p> <p>established 75:14 76:10,14</p> <p>establishing 106:1</p> <p>estate 16:12 17:1,4 20:18,19</p>	<p>43:23 46:10 98:25 107:13 108:2 117:13 135:4 138:22 155:6 160:22 167:22 168:12 175:2,4,9 178:6 183:19 220:15,19 226:13</p> <p>estate's 175:6 176:6</p> <p>estimate 74:23 77:1,3 85:11 86:2 135:5,14 183:16</p> <p>estimated 85:25 86:3 88:16 92:4, 7 95:2 135:8 227:8</p> <p>estimates 29:3 73:19 85:3,18 89:7 163:1,24 177:9, 18 190:16 192:13 218:14 231:9</p> <p>evaluating 229:3</p> <p>evaluation 9:15 10:13,24 11:7 30:17</p> <p>event 210:10</p> <p>events 163:15 183:8</p> <p>everyday 3:15</p> <p>exact 17:9 25:22 120:17 189:19</p> <p>examination 8:18 116:2 119:6 221:3</p> <p>exceeding 115:2</p> <p>Excel 37:9 47:13 62:5 64:24 103:23 104:2 188:3 190:11,20 193:24 194:23 195:3,8 200:2</p>	<p>201:11 205:6 217:8</p> <p>excess 132:25 186:15</p> <p>exchange 111:5 161:14</p> <p>excluded 216:13</p> <p>excluding 123:20</p> <p>executed 67:9</p> <p>executory 92:23,25 128:14 130:16 132:15</p> <p>exercise 214:15</p> <p>exercising 81:2,7,11 83:11</p> <p>exhibit 8:9,10 14:10,11 15:16 16:2,4,7,13,17,22,24 17:5 18:7 19:11,15,19, 20 21:2,3,8,9,13,15,17 22:17,18 23:5,6 24:6,9 28:1 29:17,19 31:11 32:2,3,21,22 33:15,23, 24 34:7,10,15 35:2,12, 17,23,24 36:16,18,19, 23 37:3,12 38:9 39:22, 23 40:14,23 43:8,15, 16 44:19 47:12,17,22 49:16,25 50:3,25 59:21 65:7,8 66:24 67:7 69:21,23 70:20, 23 71:3,16 78:20,21 79:10,11,22,23 80:6 84:9,15,22,25 92:15, 16 93:18 105:12 109:7 110:24,25 116:17 117:1 120:4 123:25 124:1 126:7,8,20,21 127:7,14 129:15,21 133:9 134:22 141:3 142:21 143:17 148:18 154:20,21 156:10,23</p>	<p>157:18 158:4,5,16,17 159:2,3,14,15 160:15, 16 161:8,9 162:1,5,13 185:18,22 188:6,7,10, 11,22 189:20 190:3,9, 13,21 191:6,17,24 192:4 193:24 194:1,23 200:2 201:10 221:2 222:4,7,10 224:7,9 230:2,5,9 231:1,17,18</p> <p>exhibits 24:2 132:8 221:10,15</p> <p>exists 35:14 41:21</p> <p>expect 183:12</p> <p>expense 105:25 106:9 107:20 108:4 169:20 170:2</p> <p>expenses 107:24 109:18 110:8, 18 111:13,19 112:8,18 113:4,11,20 121:2 126:15 127:3 134:12 143:13 167:24 175:7 228:22 229:13</p> <p>experience 53:1,18 66:10 78:9</p> <p>experiment 214:20</p> <p>expert 52:20 110:15</p> <p>expiration 83:24</p> <p>explain 147:12 164:12,17 165:4</p> <p>explanation 217:7</p> <p>extent 9:19,21 42:23 99:5 167:22 197:5</p> <p>externally 192:19</p>
---	---	--	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

<p style="text-align: center;">F</p> <p>F-6 195:17</p> <p>facilitated 91:14</p> <p>facilitates 91:2,14</p> <p>facilities 91:11</p> <p>facility 29:25 30:2 45:18 65:16 79:6</p> <p>fact 154:2 160:4 216:10</p> <p>factors 167:1 183:23 184:10</p> <p>facts 226:2</p> <p>fair 10:5 18:21 19:6 26:6 34:16 35:16 37:19 39:2,5 41:23 42:11 46:22 47:2 48:24 49:25 50:12 51:8 53:2, 19 55:21,25 58:10 60:11 62:10 64:18 65:19 66:11,21 70:13 71:7 72:9,15 73:14 74:8 77:12 78:14 79:19 81:8 82:6 84:2 87:3,11,18,20 88:3 90:16 91:9 93:17 97:11 107:14 109:2 125:4 132:5 140:23 141:2 160:13 163:8 165:14 166:21 167:12, 15 168:23 169:25 170:23 171:16 173:17 179:13 182:17 183:11 184:3 190:19 195:7 196:8,21 197:4 199:18 206:5 211:8 217:23 219:7</p>	<p>fairly 26:13</p> <p>fall 203:9</p> <p>familiar 8:12 36:2 78:5 124:9 168:5 216:18 217:19</p> <p>favor 3:19 196:15</p> <p>February 69:17 72:6 73:9 74:20 81:21,23 82:4 83:10, 19,23 84:1 126:16 127:10 128:2,15 129:4</p> <p>fee 22:24 86:10,15 89:22, 24 90:10 120:24 121:14 126:15 127:2,9 138:12 142:13 143:23 145:2 175:3 177:10,18 179:7,8 222:14,21 223:1,17,19</p> <p>feedback 18:8,10,12 20:11,17, 20 140:1 146:5,17 147:4 151:19,23 153:13,14 160:25 189:12 191:19,22 195:4</p> <p>feel 30:7,8 53:7 178:8 193:3 213:21 218:4</p> <p>feeling 2:21</p> <p>fees 17:21 18:6,23 19:9 22:10,12,14 86:13,14 89:18 90:2 95:21 98:2, 24 100:3 102:6 103:7, 14,21 104:12 109:21 110:10 111:18 112:8, 17 113:3,10,19 114:13,20 115:4,5 120:10,12,15 121:2,5, 10,17 122:1,9,12</p>	<p>123:3,19 125:5 130:4 131:3 132:7,14,25 133:19,21,22 134:7,9, 12,16,19 135:6,9,12, 18 136:2,8 137:11,14 138:1 139:12,18 141:9,23 142:7,8 143:12 144:7,8,17 146:6,17,18,21,24 156:6 160:1 175:20 176:19 177:16,24 178:11 180:3,6,10 181:18,24 182:19,24 183:6,12,17,20 222:18 223:5,12,23 229:3,13 234:7</p> <p>field 75:8 76:16,17,20 85:7, 10 204:8,22 208:14 220:11 231:7</p> <p>figure 94:25 95:14 167:6</p> <p>file 31:19 44:7,8,14,17,18 48:4 49:18 56:25 177:18 183:6 188:3 190:11 191:15 205:6 235:21</p> <p>filed 10:4 21:19 22:10,13 24:17 34:2 36:13 82:2 93:10 105:2 120:25 143:23 153:9 177:10 216:17 217:21 225:23 226:3 231:12</p> <p>filename 40:12</p> <p>filing 24:11 49:8 61:10 63:19 64:19 75:19 82:7 186:14 194:11 198:10,22 199:2,11,14 200:21 201:8,25 204:24 205:25 212:25 216:12 217:16 218:1 220:9</p>	<p>filings 125:23 175:5</p> <p>filter 207:20 209:24 210:12</p> <p>filters 201:18 204:12 205:16</p> <p>final 22:18 23:9 43:12 70:7, 10,18 124:12 148:10 150:25 151:3 153:9 154:1 208:4,5</p> <p>finally 11:15 61:21 159:13</p> <p>financer 65:18</p> <p>financial 7:25 141:15 142:17 159:9,21 173:24 179:14 223:21</p> <p>financing 36:6,9,25 37:2,7,13 39:6 45:18 70:9 125:8, 21 126:4 127:18 128:2 129:24 130:5 132:16</p> <p>find 44:8 53:20</p> <p>fine 4:14 49:23 52:21 58:5 60:15 99:6 161:20 172:18 188:18</p> <p>finish 3:20 225:20</p> <p>finite 168:9,20</p> <p>firm 5:13 7:22 134:2 172:13</p> <p>firms 18:11 43:23</p> <p>first-day 124:25 126:1</p> <p>flat 95:2</p>
---	--	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

fleet 44:7 68:13 flip 66:23 161:7 floor 115:19 flow 66:3,5,13 67:19,24 70:25 71:2,9 72:4 73:18 170:14,24 171:5 174:16 177:3 178:25 flows 66:9 focus 230:23 focused 178:1 219:15 focuses 197:22 Foerster 2:6 follow 170:11 204:5 footnote 85:24 86:9 232:7 233:11 forbear 81:1,7,11 83:11 forbearance 77:25 78:2,6,9,16 79:5,16,18 80:8 81:1, 4,13,20 82:8,18 83:8, 9,16,22 forecast 66:7 67:19 71:2,10 72:4 73:19 162:24 164:8 167:17,23 169:24 171:6 172:22 174:17 177:3 178:25 179:21,23 180:25 181:8,12,14 192:11 forecasted 167:2 171:15	forecasting 174:6 182:18 forecasts 214:10 foreclose 77:14,17,21 78:10 foreclosed 73:12,15,20 74:1 forgotten 12:19 form 28:6 39:20 53:12 54:2 55:16 56:17 57:8,23 59:9 63:23 64:6 73:23 74:4 76:22 77:6 79:1 81:9 82:9 98:6,12,17 99:1,24 100:4 101:6 102:7,19,24 103:2,8, 15 106:10 107:21 108:5,13,22 110:12 112:9,19,24 113:5,12, 21 114:15 115:23 121:18 122:3,14,21 123:8 125:9 129:5 132:19 133:2 137:19 138:3,7,13 139:15 140:19 144:9,18 145:3 150:22 153:4 162:18 163:12,22 167:7,16 168:14,19 169:1 171:20 172:24 173:11 175:11 176:1 183:14, 21 184:7,19 185:4 186:24 191:7 192:9 194:16 198:3,13,25 199:13,23 203:6,14,20 206:22 212:23 213:20 214:12,18 215:3,13,21 216:22 217:18 218:23 219:11,25 220:16 222:19 229:6,16 formal 113:23 117:24 145:4 formula 232:23 233:14 formulas	235:4 forward 199:2,15 208:3 found 24:22 27:5 49:10 207:18 foundation 82:23 Fox 17:6 20:22 94:2 120:12,15,25 121:1,5, 22 122:1,11 123:16,19 124:13,15,22 125:4,24 126:14 127:2,8,25 128:13,25 129:1,17 130:4,15 131:2 132:6, 17 133:4,14 161:3,15 176:21 177:5,15,22 178:4,6 222:16,20 223:5 FRE 189:6 free 4:22 front 8:7 34:16 40:15 44:19 47:13,21 50:3 51:1 58:15 59:22 103:10 105:11 152:7,18 224:8 226:5 FTI 17:10 20:24 141:9,11, 12,14,15,17 143:12, 14,21,23 144:2,6 145:16,25 147:5,9,18, 21 150:12 151:15,17, 19 152:4 154:12 155:20 161:15 179:23 180:2,9,16 223:21,25 224:2 FTI's 141:23 143:6 144:17 145:2,19 180:6 full 3:4 95:9 106:12	223:20 full-fledged 26:11 fully 54:21 108:24 functional 208:15 209:5 funds 175:10 furthest 182:15 future 28:20 29:2,4 86:1,15 <hr/> G <hr/> gave 56:25 110:21 123:3 gears 29:8 160:14 185:16 general 5:20 13:25 18:8 66:6 119:19 176:3 180:12 181:20 182:1 generally 5:11,16 18:9 25:3 27:21 52:12 78:6 83:13 88:12 114:24 207:6 225:15 generated 227:7 Genesis 14:22 19:13 45:15,22 46:3,16,19 85:9 150:7 154:15 189:9 194:20 220:21 221:7 230:18 231:5,7 232:14 233:15,19,24 234:3, 13,24 Genesis's 203:9 231:7 gist 197:12,18
---	---	--	---

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

<p>give 3:4,17 4:1 53:11 163:25 164:5 184:11 197:20</p> <p>giving 153:13</p> <p>Global 14:22</p> <p>good 2:5,23,24 4:5 39:15 116:5 119:8 221:5</p> <p>Gotcha 8:5</p> <p>granted 149:21</p> <p>granting 32:18 70:9,11</p> <p>great 3:2 8:19,24 10:18 11:11 35:21 39:17 44:13 69:19 70:2 89:19 102:4 119:7 157:16</p> <p>greater 100:24 227:19 228:6</p> <p>gross 20:1 152:15 153:7 154:5</p> <p>group 88:10 158:22</p> <p>grow 233:9</p> <p>guarantee 59:3</p> <p>guaranteed 164:2</p> <p>guarantees 85:4,18 163:1 231:10</p> <p>guarded 91:16</p> <p>guess 66:23 69:21 99:14</p>	<p>101:3,15,20 103:25 131:23 132:23 149:13 160:5 168:3 171:14 181:15 218:17,19 219:18</p> <p>guessing 132:11</p> <p>Guymon 93:11</p> <p>guys 119:16</p> <hr/> <p>H</p> <hr/> <p>H-4 61:22</p> <p>Halevy 143:4</p> <p>half 90:18</p> <p>halfway 170:7</p> <p>handed 222:6</p> <p>hang 67:1</p> <p>happen 131:7 164:2 184:16</p> <p>happened 54:13 186:9,22</p> <p>Happy 206:15</p> <p>hardware 57:11 59:3,4,11</p> <p>head 13:19 42:3 50:1,5 66:20 72:5 76:13 91:23 120:18 146:7 161:5 183:16 187:21 192:6</p> <p>hear 4:13 34:21 116:5 118:18</p>	<p>hearing 70:11 93:14</p> <p>held 33:12 115:14 118:14 173:13 185:10 221:1, 14 235:17</p> <p>Heller 96:25 187:2,7,11,12, 16,19 208:19,21 213:19 215:12</p> <p>helped 15:9 41:2 71:18,19</p> <p>helpful 154:18</p> <p>hereto 38:18</p> <p>hesitate 203:25</p> <p>hidden 195:10 201:16 204:10</p> <p>Higgins 116:1,3,4 118:18,23 119:4 235:13</p> <p>high 216:18</p> <p>higher 22:10,13 183:13 208:5,7 211:4</p> <p>highlighted 109:10</p> <p>highly 182:22</p> <p>Holdco 14:23</p> <p>hoped 227:18</p> <p>hopeful 220:24</p> <p>hoping 197:20</p> <p>hour 65:1 90:18</p>	<p>hours 14:3,5,7 136:24</p> <p>Huygens 13:9 16:1</p> <p>hypothetical 147:14 215:8,15</p> <hr/> <p>I</p> <hr/> <p>I-3 194:3</p> <p>I-4 59:25 60:2 200:3,13</p> <p>I-6 201:20 204:15</p> <p>ID 48:17,18,22,25 59:4,8, 10,15 60:19,21,23 61:2,12 63:14 199:12 212:8,10 214:16</p> <p>idea 197:21</p> <p>identified 49:7 50:11 87:22 90:14 196:3 198:11,22 206:12 212:7,14 214:25</p> <p>identifier 48:22 49:13 200:6,19 201:4 211:23 212:20 213:6 214:5 217:13</p> <p>identifier's 214:1</p> <p>identifiers 41:20 42:22 63:7 199:4 204:1 217:8</p> <p>identify 34:3,14 36:14 45:2 49:6,14,21 50:7 55:7 56:24 57:5,10,21 58:7, 11,23 59:13,14 60:12 63:9,14 64:20 199:11 203:18,22 207:14 214:17 217:9 218:12</p>
---	---	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

219:4	99:9,23 100:21 101:25	229:25	instances
identifying	109:22 112:2,4 120:15	independently	60:25 114:21,23
48:25 55:2,22 56:1,7	121:6 134:9 141:23	223:1,17 224:2	instructed
58:2,15 59:7,17 75:16	152:3,9 156:19	indicating	4:15 114:4,6 138:22
197:9 199:6 200:25	157:13,25 158:12,23	39:16 44:17 51:4	instructing
202:22 203:1 212:11,	159:10,22 160:1 179:8	153:15	178:12
13 219:2	208:25 209:3	indications	instruction
IDS	includes	171:11	5:12 203:13
55:10 59:3	85:24 86:10 89:21	indicator	intangible
Illinois	90:20 100:17 120:10	34:12 62:17 194:8	104:15
8:4,5	133:19 134:7 141:8	indirectly	intended
illustrative	170:2	138:21	171:11
177:8 183:2 197:19,24	including	individual	interest
immediately	10:15 38:17 155:15	53:8	30:11 31:5 32:19
80:24	169:7 176:16 177:8	information	36:14 45:24 46:2,6,23
impact	183:23 208:15 216:3	19:9 21:25 29:6 39:3	47:5 50:22 196:15
169:12 219:9,14	inclusion	40:13 43:13 49:21	197:5,14 203:2
impair	18:9 183:6	50:7 57:1 110:21	interested
3:11	incomplete	163:21 174:10 207:18	160:5
implied	172:15	217:4,9	interests
99:11	inconsistencies	informed	10:15
implies	28:4	109:14 120:23 142:12,	interim
220:19	incorporated	15 218:10	70:6,21,24 71:17
imply	38:18 211:10	input	interrogatories
215:10	incorrect	40:18 214:11	6:11,14
important	218:3	inputs	inventory
145:21	increase	136:21 165:13 166:25	25:18,21 26:9,18 27:4,
importantly	86:14	inputting	7,9,11,25 34:4 44:6
87:7	increased	165:8	45:2 47:8 55:19 57:11
inaccurate	18:17	inside	85:4
77:18	increasing	73:13,15,22 74:3,10	inventorying
Inc.'s	169:11	inspect	201:2
109:21	incur	57:21	invoice
include	114:9	inspecting	86:5 129:17 156:17,19
19:2 23:14 29:3 46:12,	incurred	59:6	157:4,13,23,25
20 86:17 117:7,11	90:20 109:17 110:7,18	inspection	158:10,22 159:8,20
120:12 133:21 153:16	111:18 112:8 121:1	58:8	invoiced
156:5 160:7 234:7	122:2,12 126:16 127:3	installed	88:23 90:22 91:18
included	128:1,13,25 129:2	54:12	106:3
17:21 18:6,15,23	130:4,15 131:3 132:6,	instance	invoices
19:10,15 85:12 87:24	25 136:2,9 139:9	135:21,25 163:25	18:2 85:25 88:16,20
88:15 91:19 92:6,10	141:9 144:6 209:20,21	180:4,5	95:25 105:8 106:18
	independent		108:17 111:21 132:8
	86:6 178:18 179:2,7		

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

135:22 143:20 144:2 155:24 178:10	Jim 235:10	Kissel 17:9 20:24 133:22,24 134:7,19 135:3,23 136:2,10,13,15 137:17 139:5,9,25 181:2,10, 18,23 182:3,7	187:5 188:8,12,21 191:10 192:14 194:21 198:8,16,18 199:7,16, 25 203:11,16,23 207:1 212:3 213:4,24 214:14,22 215:4,17,24 217:1,22 218:8,16 219:6,17 220:1,23 235:10,16,18,24
invoices' 88:23	job 214:9	Kissel's 135:6 138:1,11 223:19	knowledge 21:14,19,23 22:3,7 24:10 28:21 30:10 36:16 41:17 42:5 45:13 77:19 97:6 123:15 134:5 137:17 138:17,24 139:1,3,4,6, 25 162:17 163:10 190:14,16 192:8 205:11
involved 5:24 118:13 140:8 225:10,16 227:11,12	John 67:9	Kissner 2:4 8:11 14:12 19:21 25:6 29:20 30:15,20, 23 32:4,14,15 33:2,11, 13,14 35:25 39:15,17, 18,21,24 41:15 43:17 44:22,24,25 51:5,9 52:1,10,21,22 53:9,17 54:4 55:11,20 56:4,22 57:4,13 58:4 59:12 62:14,19 64:1,8,23 65:3,9 69:24 73:25 74:7 76:24 77:11 78:19,22 79:12,24 81:14 82:12,21 83:5 84:4,7 92:17 98:9,14, 22 99:3 100:1,7 101:10 102:10,21,25 103:5,11,18 106:14 107:25 108:9,18 109:1 110:16 111:1 112:11, 21 113:2,8,15,25 114:17 115:12,15 119:7,9 121:20 122:5, 17,25 123:10 124:2 125:12,15,16 126:10, 22 129:7 132:22 133:7 134:23 136:20 137:6, 23 138:4,9,16 139:16 140:22 142:22 144:11, 20 145:6 146:15 147:3 151:1 153:11 154:22 156:11,25 157:19 158:6,18 159:4,16 160:17 161:10 162:20 163:17 164:3 167:11 168:2,17,22 169:3 171:23 173:3,16 175:18 176:7 178:12, 15,16 183:18 184:2, 15,25 185:7,9,11	
involvement 38:24 117:22	July 155:21 162:7,15 171:8 172:8,23 174:7,19 177:5 179:2,22 181:1, 9 190:2		
iron 216:6	June 118:14 127:4 129:18 130:6,17 131:5 225:24		
issue 23:21 146:22 167:19 169:9 213:23	justify 101:19		
issues 96:15 100:9 128:6,14 130:5,9,16 132:16 218:9	<hr/> K <hr/>		<hr/> L <hr/>
item 93:4 167:14	K-I-N-A-S 221:6		labeled 188:4 230:10
items 100:9 151:23 168:1	keeping 27:22		lack 216:3 219:24 220:13
iteration 17:8 21:4,8 150:20 151:11 153:25 161:24 191:2,5,15	Kepto 164:24		law 81:3,12 134:2
iterations 21:12 40:4,5 47:18	key 163:15 167:1		lawyer 220:18 224:22
<hr/> J <hr/>	Kinas 39:16 221:4,6,15,18 222:24 229:7,17 235:9		lawyers 104:24 220:22
J-4 61:3	kiosk 25:17,20 48:19 68:8, 10,12 72:11,14		lay 82:22
James 2:13 10:17 11:2,10,19 12:6 14:20 39:25 45:1 221:5	kiosks 31:6 34:13,17,21,24 35:1,8,12,14,18 37:25 38:1,3 40:4 45:3 46:5, 7,13,20,23 47:5,9 48:1 54:10,12,14 57:15 62:21 63:4 68:13 69:4, 16 72:15,24 73:8,12 75:2,7,17,18 94:15 118:11 186:9,15 187:13 190:18 193:21		leads 3:12
James's 115:21			learned 57:25
January 67:15,25 69:5 72:8,25 74:2,10			lease 27:6 33:1 52:13 92:23 125:8,21 126:3 128:14,18 129:3 130:16,21 131:4 132:15 200:23

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

lease/executory 128:6 130:9	lenders' 10:14 90:3 184:5	166:14 178:17 225:3, 19 226:8,25 228:15	200:22 204:6 212:8,10 214:16
leases 54:12 55:14 93:1 194:18	letter 79:5 80:8 81:19,24	liquidation 164:21	locations 42:24 54:14 55:7,14
leave 160:5	letters 79:16	liquidity 164:7 189:4	logistics 91:1
led 226:21	level 216:18	list 34:17 35:18 218:1	Logix 85:25 88:16,20,23 95:25 96:3 105:8 108:17 117:8
left 213:19 215:11	LID 48:16 49:5 50:19,21 59:4 60:12 62:11,18, 20 63:2 200:6,18 204:5 211:23	listed 9:2,6 35:2,8 38:17 61:10 64:13 75:19,21 93:4 128:10,21 130:25 132:17 165:11 166:17 170:10,19 171:2 174:2 176:24 206:6 210:15	long 6:20 7:6,18 10:1 14:1
legal 32:24 52:9,14,20 63:1 75:22 86:22 110:4 214:2,3,11	LID's 62:17	lists 35:12 44:9 48:1,5	longer 22:6 173:10 208:15 209:5,14
legality 133:4	LIDS 44:9,11 48:5,12 49:2,7 55:7 56:15,20 60:9 193:20 194:7,10,17 195:25 199:19 200:21, 22 212:25	litigation 5:20,21,24 164:23	looked 33:18 142:13 152:19 155:17 162:1
legally 59:1,16	lied 188:1	live 6:17	loop 181:16
legitimacy 146:6 147:5	lien 34:2 46:3,5,9,12,17,19 57:3 58:3 86:18 96:16 97:1,2 154:14 203:10 220:21	LLC 14:23	loss 205:13 206:1 209:25 210:8,10
legitimate 197:9	liens 20:2 70:9 107:3 211:24 216:17 217:15 220:13	LLP 124:13	lost 206:8,21 207:7 210:6, 19 211:3,9
lend 31:4	life 201:11 208:17	LLP's 126:14 127:2	lot 3:24 34:19 84:19
lender 31:8,14 37:16 45:4,9, 17,23 46:8,9,11 47:9 54:16 57:7 58:17 65:20 73:12 78:8,10 79:8 80:25 87:23 90:8 156:3 157:11 159:9,21 160:8 232:2	light 71:5,12	loan 29:25 30:2 31:12 32:22 36:18 37:24 38:2,22,25 39:6,9 63:5,11,16 65:21 70:14 79:6 80:13,15, 16 81:3,12,25 83:12	loud 51:13 124:21 155:18 225:6
lender's 160:1 196:19	limited 2:7 8:16 10:15 14:23 29:11 30:4 36:8 79:8	local 157:12	lower 208:6 211:4
lenders 23:15 45:12,15,19 85:20 87:6,15 88:2 99:22 100:3,14,16 112:1,5 118:10 122:8 149:7,9 176:9,18 187:1 193:2,6 197:14 214:8 235:6	limits 119:2	located 55:15	LP 14:24
	lines 127:17 128:6 129:23	location 38:17 44:7 48:17,18, 22,23,25 49:12,20 50:21 55:9 58:16 59:2, 15,16 96:19 199:12	lunch 64:25 115:13 119:11
			<hr/> M <hr/>
			M&a 5:20

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

machine 38:18 49:11 50:18,19 57:22 58:1,3,15,16,21, 25 59:6,18,19 60:19, 20,21 75:21 88:2 194:8 197:6,7 203:1,3, 4,18,22 204:5 206:2 210:3,6 219:5 machine's 204:4 machines 22:25 24:13,16,19 27:22 28:13 34:22 36:8,21 38:24 39:8 41:19 42:24 50:11,22 55:9 60:13 61:12 62:12 63:10,15,21 64:5,13 73:13,15,20, 22 74:2,3,6,10,19,24 75:24 76:1,3,4,8,12, 16,21 77:1,4,8 85:6,7, 11,21 87:22 89:6,12, 15,16,17 90:3,4,8,14, 15 91:3,7,15,16 97:8 187:15 193:10,12,17 194:4,25 195:11 196:4,14,18,23 197:13,14 198:1,11,23 199:11,21 200:7,11,17 201:5,14,24 202:4,14, 17,19,22,23 204:8 205:4,10,13 206:6,19 207:12,14,21 208:13, 18,22 209:2,5,7,10,13, 17,21,22 210:15,19 211:3,10,15,19,24 212:7,14,21 213:11, 16,19 214:24 215:5, 11,20 216:4,14 217:12,16 218:2,20 219:2,20,23 220:2,5, 10,13 230:17 231:3,6, 8 232:14,15 233:19,20 234:6,8,9,17,18,20 made 22:9,15,17 23:15 42:21 164:12,18 183:5 192:16 211:14 214:4	220:19 224:4 235:22 maintaining 27:23 majority 223:7 make 38:23 58:8 75:23 84:5 104:7 107:10 116:8 135:18 147:25 155:1 163:15 173:4 174:12 187:8 188:2 202:10 209:19 214:10 224:12 makes 31:13 80:18 130:7,18 131:6 132:21 162:14 making 106:13 135:12 155:19 213:22 management 7:25 mandated 133:1 mandates 164:6 MANN 25:4 30:7,19 32:10,23 41:10 52:8,19 53:4 54:2 55:4,16 56:3,17 57:8,23 59:9 63:23 64:6 65:2 73:23 74:4 76:22 77:6 81:9 82:9, 15 83:2 98:6,12,17 99:1,24 100:4 101:6 102:7,19,24 103:2,8, 15 106:10 107:21 108:5,13,22 110:12 112:9,19,24 113:5,12, 21 114:15 118:15,20 121:18 122:3,14,21 123:8 125:9 129:5 132:19 133:2 136:17 137:19 138:3,7,13 139:15 140:19 144:9, 18 145:3 150:22 153:4 162:18 163:12,22	167:7,16 168:14,19 169:1 171:20 172:24 173:11 175:11 176:1 178:8,14 183:14,21 184:7,19 185:4 186:24 188:19 191:7 192:9 194:16 198:3,13,25 199:13,23 203:6,14,20 206:22 212:1,23 213:20 214:12,18 215:3,13,21 216:22 217:18 218:4,23 219:11,25 220:16 222:19 229:6,16 235:13,19 manner 75:15 200:25 manually 165:8 March 51:6 55:13 126:17 127:9 128:3,15 129:4 margins 108:7 Marjorie 93:10 mark 8:9 14:10 19:17,18 32:2 39:21 65:7 69:21 123:25 126:6,19 134:21 154:20 156:8, 22 157:17 158:3,15 159:1,14 188:1,4,5,10 marked 8:10 14:11 19:20 22:17 23:5 29:17,19 32:3 34:7,10 35:23,24 36:17,18 37:3 39:23 43:15,16 44:11 47:22 48:12 56:15,20 65:8 69:23 71:3 78:20,21 79:11,22,23 84:9 92:15,16 105:11 109:7 110:24,25 116:11 120:3 124:1 126:8,21 129:15 132:8 134:22	142:20,21 154:21 156:10,23 157:18 158:5,17 159:3,15 160:15,16 161:8,9 162:12 188:7,11 221:2 market 105:9 marketing 86:14 119:1 227:17 marshal 46:15 Mason 235:13 master's 7:23,24 match 59:2 201:24 205:24 matched 61:13,19 62:4 204:23 220:8 material 40:8 65:16 85:2,17 149:9 202:7 materials 12:6,13,14 208:10 math 129:10 131:9,20 215:16 232:13 233:19, 21 234:22 235:4 mathematical 232:22 233:13 235:3 matrix 114:25 matter 12:15 219:3 matters 145:21 maturity 80:13 Mcalary 27:15,18 67:10
--	---	---	---

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

Mcalary's 67:11	Microsoft 195:8	168:24,25 171:19 175:2,16,17 180:16 182:7	86:20 89:17 232:19
Mcperson 93:22,24 105:15,17 106:7,20 107:18	middle 105:12	monitoring 176:5	multiplying 77:5
means 5:22 34:13 49:5 52:6, 17 71:5 81:20 147:13 168:9 197:9 199:5,9 212:13	million 69:4,15 72:23 73:7,22 77:5 79:6 86:9,12 149:18,24 154:8,9 174:4,8,18,23 175:3, 10 176:10 177:1,6 178:7 182:18,23 183:13,20	month 25:23 86:1,2 88:17 94:24 97:19 108:2,3 130:17 177:20 179:7	<hr/> N <hr/>
meant 75:21 87:1 163:24 167:21 181:12 182:21	minimum 33:19	monthly 94:22 120:24 126:14 127:2 142:13	narrative 25:5
medication 3:8	minute 58:6	months 6:22,23 26:6 29:4 40:10 42:24 85:25 86:1 88:16 92:6 129:3 177:19	native 39:20
meeting 125:1 126:2	missing 84:6 210:1	morning 2:5	nature 11:17 17:14 18:4 216:21 228:9
meetings 125:7,20	misspoke 60:5 199:18	Morningstar 86:2 117:8	NCC 158:22
member 139:1 223:16	mistakes 24:22 28:3	Morrison 2:6	necessarily 146:10 210:9
members 20:22 43:22 66:15 71:21 222:25	misunderstood 61:14	Moses 13:9 16:1 118:16,20 136:19 226:24 227:21	necessity 10:25
memory 18:19 27:2 51:25 60:8 66:21 90:1	model 163:15 165:12,13,17, 21 166:24 167:6 171:9 174:12,21 179:4 182:17,20 184:21,24 191:6 192:7,10,24 201:11	motion 14:21 49:18 70:6,14 92:22 116:12 125:21 184:17 216:17 222:6 224:7,16,18 225:10,23 226:4,11 227:5 228:13,20	needed 26:11 176:9
mention 13:21	model's 163:3	motions 49:22 56:11,13 125:8 126:4	negative 101:16 170:20 174:4 176:25 178:23 179:19 180:23 181:4
mentioned 222:13	modified 19:11	move 134:20	negotiated 190:17
message 44:4 47:24 48:3	modify 18:24 167:5,8	moved 59:5,18 204:6	negotiations 189:5 193:3
met 2:14 119:19	modifying 70:10	MTL 164:22	net 98:20 101:13 122:16 123:13 136:7 138:15 144:13,23 168:7
method 202:22 203:19	moment 74:14 175:14	multiplied	Nevada 8:3 14:24
metric 76:11 199:20	money 31:5 167:12,13		newer 161:23
Michael 143:3 154:24 155:5 161:17 223:23			nods 3:24 13:19 42:3 50:1,5 76:13
			nomenclature 34:20

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

nonsale 189:6 North 8:2 note 88:14 89:21 92:1 noted 49:2 147:9,21 149:9 171:12 notes 29:4 49:18 86:16 162:25 205:22 notice 8:16,21 9:6,11 185:22 189:21 190:4,7 notices 221:10 noticing 86:11 109:16,18,24 110:1,14,19 111:14 114:21,22 115:2 119:23,24 noticing-related 110:7 111:18 number 11:15 22:25 24:19 30:9 32:12 35:10 50:19,20 58:1,24 59:1 60:6 61:7,10,11,16,18 62:2,3,4 64:12 73:3 85:5,11 87:22 89:6,11 90:4 101:16 118:11 120:17 165:2,9 170:10 184:22 187:9,20 190:18 195:21,24 196:3,22,25 199:2,15 200:3,16 201:22,23,25 202:11 203:5,19 204:19,21,23 205:9, 23,24 208:1,4,5,14 211:2,6 212:25 213:5 216:2 219:3 224:3 230:16 231:24 232:9, 14 234:8,16,18,24 235:4	numbers 24:23 42:22 50:17,23 57:11,15 58:14,21 62:3 63:9 93:19 115:1 120:24 131:25 165:8 172:17 195:24 196:19 198:7 201:1,2,4,8,24 202:14,17,20,24,25 204:21 205:10 206:6, 12 215:8 216:3,9,11, 13 217:17 218:2,21 219:24 220:3,8,14 221:16 <hr/> O <hr/> object 32:23 57:23 63:23 64:6 76:22 77:6 82:15 98:8 106:10 198:3 212:1 218:4 objected 114:3 123:18 139:7 objecting 52:19 objection 4:16 25:4 30:7 32:11 41:10 52:9 53:5,12 54:2 55:4,16 56:3,17 57:8 59:9 73:23 74:4 81:9 82:9 98:6,12,17 99:1,24 100:4 101:6 102:7,19,24 103:2,8, 15 107:21 108:5,13,22 110:12 112:9,19,24 113:5,12,21 114:15 118:15 121:18 122:3, 14,21 123:8,21 125:9 129:5 132:19 133:2 136:17 137:19 138:3, 7,13 139:15 140:19 144:9,18 145:3 150:22 153:4 162:18 163:12, 22 167:7,16 168:14,19 169:1 171:20 172:24 173:11 175:11 176:1 177:11 178:8 183:14, 21 184:7,19 185:4	186:24 191:7 192:9 194:16 198:13,25 199:13,23 203:6,14,20 206:22 212:23 213:20 214:12,18 215:3,13,21 216:22 217:18 218:23 219:11,25 220:16 222:19 229:6,16 objections 4:13 53:10 114:19 115:22,23 176:17 183:23 223:8 objective 218:11 obtain 56:7 70:7 obtained 11:8 77:3 obvious 101:17 occur 81:22 occurred 80:13 October 80:14 official 13:17 104:4 142:17 officially 227:14 omissions 216:4 omnibus 92:24 one's 16:3 221:11 ongoing 24:21 28:25 43:3 96:22 97:1 198:6 open 8:8 39:25 59:23 103:23 188:3 201:11	operations 167:20 173:15 183:9 opine 108:7 133:4 opinion 52:15 86:22 119:2 133:6 175:8 options 165:6 orally 222:22 order 14:21 56:7 70:21,24 71:17 86:25 92:24 124:12,15 125:18 132:17 176:9 181:20 ordered 103:4 173:15 198:5 orders 70:7 original 28:2,6,8 40:9 originally 152:3 outcome 165:10 167:1 outcomes 164:1 output 164:15 167:6 179:24 outstanding 183:17 overseeing 164:7 owe 174:7 owed 94:21 175:20 owing 181:20 227:19 owned
---	--	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

186:15	22 46:23 47:4 53:3	206:16 221:22	placeholders
owner	115:2 119:24 149:25	perform	163:14 171:10 173:2
94:13	150:3,16,21 191:23	40:21 47:8 104:1	177:8 179:6 180:1
owners	197:20 226:14	performance	181:12,14 182:21
108:7	parts	162:25	183:2
owns	28:19 29:5 208:22	performed	plain
75:3 91:4	209:12	40:25 45:2	70:13
	party	period	plan
<hr/>	36:7 53:20 78:8 96:1	17:25 71:6 81:4,8,13,	155:7
P	137:21 145:20 160:5,	20 126:16 127:4,10	play
	8,11,12 227:22	129:18	136:13,15 137:17
p.m.	Paul	periodic	played
81:22	13:9 16:1	4:18	139:19
package	pay	periods	pleadings
62:22 198:2 199:22	86:4 167:24 168:24,25	95:2 171:15	124:25 125:6,19 126:2
200:8,18 201:6 211:20	169:20 171:17 173:8,	permitted	pledged
218:22	10 175:3,10 176:10,19	78:10	38:2,4,21,24 39:8 45:3
pages	178:6 180:16 182:7	person	47:9 62:12 63:4,10,16
66:23,24 67:3,4,6	183:20 184:1,9	2:15 225:14 226:1	75:24 76:12 77:2,4
116:25 230:6,8	payable	personal	87:23 90:15 193:17
paid	172:22	3:7	194:5,8 196:4,23
47:1 174:18	paying	personally	215:20
paint	175:6 178:10	45:1 221:12 226:2	plenty
152:18	payment	pertaining	53:12
paper	173:5	30:9 32:11	point
38:5	payments	petition	4:20 27:10 29:5 31:19
paragraph	22:21 23:15,18 167:22	68:19 73:3 83:25	57:25 59:6 78:1,17
49:16 80:10,20,25	payroll	124:14 213:17	87:11 96:24 104:1
81:16,18 109:11 120:5	169:12,13	physical	105:5 147:7 148:5
124:19 133:11 141:5,6	pending	58:8 185:21 188:22	153:24 172:14 173:17
222:13	4:23	physically	174:13 187:4 211:7
part	people	16:19,21,23 20:11,14	228:10
3:12 28:24 33:22	3:16	41:20 57:10,21 58:1	pointed
49:19 102:16 117:1	percent	60:19,20 160:25 201:2	28:3
139:19 153:8 184:4	86:19 89:11,12,14	picture	pointing
185:25 210:10 216:14	90:3 233:21,25	152:19	52:1 56:9
222:9 225:5 229:1	234:13,23	place	points
233:12	percentage	39:1 133:10	17:1 27:5 47:3 96:12
parted	77:4 89:17 148:2	placeholder	Polednak
208:23	232:16,19 233:23	147:14 148:6 153:7	157:5,8
participate	234:2,5	172:17 174:20 177:12	portion
217:20	perfect	182:24	118:9 146:12 147:1
parties	84:5 117:5 125:3		154:2
20:2 30:1 41:14 45:21,			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

position 5:6 7:6,14,19 105:24	191:2 202:6 218:14,25 220:5 230:15,25	pretty 64:9 66:9 116:9	86:25 98:20 99:13 100:24 101:14 122:8, 16 123:13 136:7 138:15 144:14,23 147:15,19 148:3,7,9 152:15,21 153:7 154:5,10 164:21,23 167:19,24 175:1 189:7,8 190:1,4 197:7, 16,22,25 215:18 218:20 219:1,10,19 220:15 227:19,24 228:1 231:23 232:2
possession 26:13,16	premised 166:22,24	previous 7:14 17:8 19:12 21:11 150:24 151:2 161:23	process 24:25 25:2 26:8 43:3, 8,9 86:14 95:20,23 96:8 97:23 101:21 110:11,14 111:15 119:1 121:3,11,23 122:2,13 125:2 126:3 135:7,9,13 136:25 139:10 140:1 142:9,11 144:25 160:4 183:9 206:2 222:18 223:2,6, 13,24 225:16 226:20, 22
possibly 25:14 115:2	preparation 13:1,13,21 31:25 146:1	previously 6:8 22:18 31:17 36:23 37:4 59:5,19 198:9 211:22 212:6	produce 74:22
post 160:22	prepare 11:25 20:12 66:13 71:16,18,19 160:23 189:11 191:18 192:24 229:12	price 22:23 211:14	produced 12:14 42:10 43:11 44:6 170:6 188:15,16 228:8
post-petition 45:18,22 65:18 70:8 165:23	prepared 9:17,22 10:7,19 11:3, 12,20 12:4 21:21 22:1 28:21 66:16,18 67:24 72:4 85:2,17 99:7,16 101:4 161:4,6 162:13 163:19 177:4 179:1,21 181:8 186:5 189:12,18 192:5 195:2 228:2,5	prices 226:19	product 148:10 150:25 151:3 153:10 154:1
potential 52:1 160:12 197:22 227:6	preparing 5:12 10:16 12:22 13:5, 12 14:2,6 20:15 27:25 31:20 33:21 34:10 68:3 99:21 100:9,20 101:21 102:1,12 111:24 115:6 121:24 122:20 123:7 137:24 144:3,15 164:10,18	primarily 197:21	production 12:5,13
potentially 42:23 119:23 208:16 209:12	present 22:2	primary 116:23 217:25 230:23	professional 17:20 18:6,23 19:9 43:23 86:13 90:2 120:10 133:19,21 146:5,17,18,21 173:20 182:18,24 183:12,17, 20 234:7
Powerhouse 94:13	presented 82:16 218:6	principal 15:22 226:21	professionals 17:1,4,16 20:18,20,23
practical 25:9 199:5 219:3	preserve 86:25 87:1 95:22 96:8 97:15,22	principals 5:13 17:7	
practice 5:15 140:3	preserved 115:24	prior 7:13,21 19:14 21:4,8 38:24 59:6 125:13 150:20,24 151:2,11 152:6,11 153:1 163:15 170:4 191:2	
pre-marked 188:3	preserving 98:3	private 5:24	
pre-petition 105:1 107:3	president 5:7,9 6:21 7:2,11 226:17 229:11	privilege 178:9 235:20	
precedent 80:24		privileged 119:17 177:15 185:6 188:14	
precise 117:16,21		problem 168:13,16	
prefer 131:23		problems 217:10	
preliminaries 4:7		proceed 119:8 185:12	
preliminary 11:24 12:8 16:11 19:25 20:5,8,13,21 21:7 23:10 85:1,16 149:22 160:21,23 162:12 163:19 170:1, 22 182:22 186:3 189:5		proceeds 10:4,9,17 20:1,2 85:19	

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

<p>22:10,12 25:12 43:23 135:4 155:6 161:1,2 177:9 182:13 229:4,13</p> <p>program 7:23 27:3</p> <p>project 45:6</p> <p>projected 69:3,16 73:7 171:6 172:7 181:2,9</p> <p>projecting 177:4 179:1,22 180:25</p> <p>projection 174:17,21</p> <p>projections 214:10</p> <p>promise 82:25</p> <p>pronounce 156:18</p> <p>proper 59:17 174:14</p> <p>property 10:14 36:15 45:24 46:1 128:19 129:3 130:21 131:4 132:15</p> <p>proportion 76:7,20 90:14</p> <p>proposal 87:14 149:23 189:7</p> <p>propose 169:20</p> <p>proposed 11:1,9,18 65:21 85:21 86:8,24 102:17 218:13</p> <p>proposes 149:6</p> <p>proposing 169:22</p> <p>protect 85:22 91:16</p>	<p>protection 22:21 23:15,17,21 155:15</p> <p>prove 228:21</p> <p>provide 16:21 41:5 91:11 97:14 99:13 100:24 218:14 222:17</p> <p>provided 18:22 19:2,4,7,8 20:20 96:7 100:13 140:1 150:12 151:19,24 153:14 160:3 161:24 162:15 228:22 229:4, 14</p> <p>providing 17:4 169:23</p> <p>Province 5:5,6,10 6:15,21 7:2,4, 14,16,22 12:10 13:5,8, 25 15:22,24 17:8 20:23 41:2,8 66:15 71:21 86:10 89:22 90:10 102:3 104:18 117:12 140:21 145:12 161:3 173:24 174:7,17 175:10,20 176:10 189:13 191:20,23 195:5 221:11 223:1,16 224:1 225:10,15 226:18,19 228:4 229:11</p> <p>Province's 22:24 145:14 175:3 176:19</p> <p>proving 107:23</p> <p>PST 81:23</p> <p>pulling 53:14</p> <p>purchase 22:23 211:14</p>	<p>purchased 208:21</p> <p>purchaser 187:13</p> <p>purpose 81:19 142:7 149:10 214:19 231:12 232:8</p> <p>purposely 148:13</p> <p>purposes 164:4 230:13,14 231:2 233:9</p> <p>pursuant 8:21 124:22</p> <p>pursue 176:16</p> <p>pursuit 164:23</p> <p>put 38:25 163:14 174:11, 20 177:12 199:2,15 220:2 230:20 233:1</p> <p>puts 184:24</p> <p>putting 179:5,25</p> <hr/> <p>Q</p> <hr/> <p>qualified 167:23 169:7</p> <p>quantifiable 228:23 229:4,14</p> <p>quantify 103:6,12,20 104:11 113:9,18 117:16,20 122:10,18 123:2,6 138:10 145:1</p> <p>quarter 25:24 26:1,2</p> <p>question 3:20 4:8,10,16,23,24 23:20 30:14,21,25</p>	<p>58:5 60:14 61:15 62:13 71:8 76:9 82:11 96:5 100:6 101:8 102:9 113:14 115:24 122:24 125:11 132:23 133:14 136:19 137:2 154:16 181:3 193:15 197:2 198:15,19 199:5 200:12 203:8 229:9,10</p> <p>questions 2:8 11:24 23:25 53:7 115:18 116:7 118:21, 24 221:8,24 222:3,5 227:22</p> <p>quick 39:12 185:18 221:8</p> <p>quizzing 82:22</p> <p>quote 48:1,5,6,14</p> <hr/> <p>R</p> <hr/> <p>range 213:6 226:18</p> <p>ratably 100:23</p> <p>rate 28:23 105:6</p> <p>rates 183:7,9</p> <p>ratio 232:15 233:18</p> <p>reached 136:5</p> <p>read 9:14 10:11,23 11:6,16 30:20,22 38:14 44:3 49:15,17 51:12,13 62:14,15 68:6,22 69:10 72:19 73:3 80:12,22 81:18 82:12, 14 92:2 93:8 94:9 95:9 105:23 109:12 116:14 120:19 124:21 125:12,</p>
---	--	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

<p>14 127:23 128:10,22 130:11,24 137:2,3 146:12,14 147:1,2 161:16 162:5 166:18 170:10 176:23 179:18 180:21 182:11 195:19 198:16,17 200:3,13 201:20 204:17 224:21, 24 225:6,7,19 228:15</p> <p>reading 106:5 166:2,4 190:7 225:20</p> <p>reads 85:24 86:10 185:25</p> <p>real 185:18</p> <p>reality 171:11</p> <p>realize 68:4 73:19</p> <p>reason 3:3 77:17 142:3 159:25 208:8 211:6 215:25 218:3</p> <p>reasonable 108:21 114:14 115:5, 6,10 132:24 139:13,18 163:14,20 171:10 173:2 174:11 175:6 177:12 179:6 180:1 181:13 192:16,18 228:22</p> <p>reasonableness 10:25</p> <p>reasoning 147:23 154:14</p> <p>reasons 115:4 208:15</p> <p>recall 17:4,13,14,18,22,25 18:4,12 23:24 24:3 26:22 43:2,5,25 51:16, 21 55:12 63:19 64:2,3 71:1,4 74:16 75:7</p>	<p>76:3,15 77:13,15,24 78:15 94:24 95:3 104:10 114:1,6,8 140:24 145:25 146:4, 16 147:23 151:17 155:19 160:9 165:21 178:4 180:2,14 182:2, 5 184:20 191:25 193:12,16 199:20 201:3,5 202:13 212:22 215:22 216:12 228:8</p> <p>recap 153:22</p> <p>receipts 66:7</p> <p>receive 16:25 17:11 25:19 98:20 122:8 144:13 166:23 177:6 179:3,23 181:2,10 191:22 197:6</p> <p>received 17:6,7,15 18:5 19:13 20:17 25:8 40:13 65:20 82:24 103:20 104:11 137:8 147:5 155:13 177:10 188:20 222:14 223:8,11,22,25</p> <p>receiving 51:16</p> <p>recent 79:15 175:5 183:7 191:15</p> <p>recess 44:23</p> <p>recharacterization 23:20</p> <p>recipient 163:2 181:13</p> <p>recognize 14:17 16:7 19:22 29:21 32:5 36:1 40:2 43:18 65:12 70:3 78:24 79:13,14,25 111:2 126:11,23,25 134:24 142:25 156:14</p>	<p>157:1,20 158:7,19 159:5,17 160:18 161:11 189:1 190:23</p> <p>recollection 12:18 54:9,18 67:18 77:21 92:9 106:25 107:18 121:5 162:8,11 166:3 190:8 194:4 200:5,17</p> <p>recommend 203:25</p> <p>reconciliation 18:2 24:21,25 25:2 40:4,18,22 41:1 43:7 44:6,10 48:1 55:19 56:19 190:18 196:17 202:9 206:2 231:11</p> <p>reconciling 26:9 42:22,25 217:10</p> <p>record 2:12 3:22,25 4:3 27:5, 11,12 28:3,4,5,6 30:22 33:11,12,13 40:10 44:22,24 62:15 68:12 82:14 115:13,14,15,22 125:13,14 137:3 146:14 147:2 185:9,10 198:17 221:1,14 235:16,17,18,20,24</p> <p>record's 104:8</p> <p>records 24:21,22 25:8,13,15, 17,20 26:13,15,17,20, 24 27:3,4,6,7,8,9,23 34:4 38:7 40:13 41:22 43:4 49:11 50:16 55:8 58:14,18,20 61:13,18 62:4 74:22 75:4 80:4 85:8,11 90:9 186:16, 17 196:1,7 200:10 201:9 202:1 204:22 205:23,25 206:9,24 207:16 209:15 210:21, 23 211:16 213:1 214:7 216:5 217:11 219:5</p>	<p>220:9 230:22 235:8</p> <p>recoverable 183:25</p> <p>recoveries 178:2 181:25</p> <p>recovery 176:15 180:12 227:7</p> <p>recreate 42:16</p> <p>red 196:11</p> <p>reduced 86:24</p> <p>reduction 22:23 23:14 152:14,21</p> <p>refer 2:9 12:13 13:16 14:25 20:4 33:20 34:21 37:6 43:1,7 48:9 84:18,21 106:2 143:8 155:11 161:22 170:23</p> <p>reference 38:19</p> <p>referenced 61:17 104:19 150:14</p> <p>referencing 51:4</p> <p>referred 37:9 60:23 190:4</p> <p>referring 15:1 20:6 25:16 33:23, 24 34:6,23 37:12 44:19 70:19,20 84:22 93:6 116:18 135:15 141:12 143:18 146:9 154:25 170:22 187:12 191:8 208:10</p> <p>refers 44:15 68:10 72:14 80:16 189:14</p> <p>reflect 18:24 67:16 167:21 196:14,22 205:9</p>
---	---	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

reflected 132:8 206:25 209:14 211:16 reflection 230:21 reflects 174:17 refresh 12:18 54:17 67:18 92:8 106:25 107:17 121:4 162:8,11 190:8 194:4 200:5,16,22 regard 10:4 reject 49:22 54:5,9 92:22 rejected 44:11 48:12 54:11 55:8 56:16,20 193:22 194:18,25 195:11,25 213:1 rejection 49:19 52:6,7,12,17 53:25 56:11,13 92:25 125:8 126:3 rejections 125:21 relate 32:21 36:17 related 13:11 18:1,10 33:8,10 70:11 86:14 87:8 88:25 91:24 121:10 135:9,18 139:9 197:15 198:22 223:2,6,24 232:23 235:4 relates 20:2 49:22 52:2 56:10, 12 86:7 109:23 119:24 230:24 231:5 233:14 234:24 relating 54:9 82:17 132:7 136:18	relation 79:6 relationship 82:20 relative 50:19 55:9 89:6,12,16 107:8 108:16 118:11 relevant 9:19,22 42:23 63:2 75:15 82:23 148:10 199:20 reliable 58:2 219:4 reliant 179:4,24 184:13 relied 110:21 111:16 134:18 135:14 relief 70:11 rely 133:5 207:13,25 relying 41:21 215:14 remained 82:7 remaining 12:24 remains 66:24 96:21 remedies 81:2,8,11 83:11 remember 18:8,19 22:20 24:18 25:22 26:10 27:17 41:13 55:17,18 63:24 74:14 75:4 91:23 104:13 120:17 140:16 146:8 155:22 176:13 185:5 195:5 202:15 212:24 removed 22:22 23:18 147:10,22	152:5 153:20 154:12 155:16 rendered 124:24 125:19 126:1, 15 127:3 repeat 62:13 82:10 83:4 102:8 181:3 193:15 198:14 repeating 52:25 rephrase 4:9 19:5 56:5 76:9 96:4 100:6 replaced 204:4 report 234:25 reporter 3:13,21 4:2 8:9 14:9 19:18 30:22 32:2 62:15 65:6 82:14 123:25 125:14 126:6, 19 137:3 146:14 147:2 198:17 221:17 reporting 77:9 reports 228:1 repossessed 73:21 represent 2:6 60:7 61:8 62:2 76:7,20 133:15,17 195:22 201:22 204:20 205:21 207:5 221:7 representation 223:5 representations 225:9 representative 9:1,5 12:1 30:13,16 109:15 134:18 135:3	142:16 143:14 representatives 222:22 representing 13:11 53:6 227:12,13 represents 227:5 reprogrammed 59:5 204:4 repudiating 52:18 request 56:14 85:2,17 185:2 requested 190:11 229:11 requesting 56:1 require 174:11 175:13 reservations 24:12 173:21 210:25 reserve 235:20 resolution 29:7 219:1 resources 168,9,21 respect 25:20 48:19 214:4 response 32:14 56:14,23 responses 4:1 responsibilities 5:9 7:9,10 responsible 5:11 27:22 rest 83:13 106:5 125:22 146:7
---	--	--	---

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

restate 229:9	revised 28:5,23 70:6 71:2 72:3 73:18	roughly 76:20 129:13 131:15 187:22 207:24	13,24 225:11,16,23 226:3,12,19,22 227:18 228:1,6 230:15,25
restroom 4:21	revision 154:1,2	row 35:3 68:14,18 69:7 72:17 73:4 166:14	sale-related 86:7,11,13 109:19 110:20 116:21 117:11 144:7 149:18 233:5 234:7,11
restructuring 5:16 53:2,19 111:8 140:4 166:10	Rich 143:4	rows 35:13	sales 125:7,20 135:6 139:10 215:18 227:7
result 11:8 44:10 112:12 165:14 184:11 220:14 227:19	rights 81:2,7,11 83:11	run 28:23 183:7,9 206:11 234:22	satisfaction 80:23
resulted 144:24 226:13	Rob 39:15 220:24	S	satisfied 169:16 182:25
results 56:19 85:4,19 163:1 184:23 225:24 231:10	robbery 210:11	S&k's 135:8	satisfy 167:14
retain 114:2 123:16 139:5	Robert 221:6	sake 221:25	scenario 185:2
retained 110:3 140:14,17 141:17	role 7:1 136:13,15 137:16 226:17	sale 10:4,9,17 12:8 16:11 19:25 20:1 22:24 85:1, 12,16,20 86:10,25 87:24 89:22,24 90:10 95:18,20,23 96:8,25 97:22 98:4,8,11,19 99:12 100:24 103:3 109:24 110:7,11 111:15,18 112:14 113:1,7 116:15 117:25 118:25 119:24 121:3, 11,23 122:2,7,8,13 125:1 126:3 128:18 129:3 130:21 131:4 132:7,15 134:13,17 135:9,13 136:6,18,24 137:9,14,22 139:19 140:1 142:9,11 143:6 144:14,25 153:9 154:16 160:4,9,12 164:21,22 165:24 167:19 174:25 183:9 186:3 189:7 190:1,4 191:2 196:10 197:7, 15,22,25 202:3,6 205:1,3,6 208:25 218:20,25 219:9,19 220:5 222:18 223:2,6,	scenarios 165:2,5
retention 123:18,23 124:12 132:17	roles 5:9 7:8,10		schedule 34:1,6,9,15 35:2,4,5, 12,17,19 36:8,20 37:10,11,12 38:17 44:8,12 48:13 49:3 56:21 61:17 62:5,24 65:23 155:8,10,11 199:3
revealing 119:17 177:14	Romanette 92:2		scheduling 70:10
review 16:4 31:20 33:9 34:9 37:22 51:14 86:5 95:25 105:8 111:21 120:23 135:17,22 142:12 144:1 145:5,8 175:13 189:8 208:20 223:1,17,19 224:2 226:7 227:1 235:20	rope 53:11		school 8:1
reviewed 12:5,6,7,8,9,10,12 15:21,24 31:16,18 33:16 36:22 37:3 39:5 126:24 146:6 213:9 224:23	Rothschild 17:7 20:22 94:2 120:12,15 121:1 123:16 124:13,23 125:24 126:14 127:2 128:1,13,25 129:2 130:4,15 131:3 132:6 133:4,14 161:3 176:21 177:5,16,23 178:4,6 222:16,20 223:5		scope 9:16 10:14 17:19,23 30:8,17 53:5 218:5
reviewing 38:7 226:4	Rothschild's 121:5 122:1,12 123:19 124:16 125:5 127:9 129:17 132:17		screen 68:4 191:16,18
	rough 2:1,2 76:7 77:2		scroll 207:2
			second-to-last 50:25

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

section 86:7	105:23 109:12 161:16 226:15	118:6,8	Singerman 156:18 158:11
secure 38:2,21 39:8 63:5,11, 16	separate 23:21 167:19 169:8 173:13 191:13	sharing 155:20	sit 225:22
secured 23:15 29:14,25 30:2 31:8,14 36:7 37:16,19, 24 39:6 45:9,11 57:6 70:8 79:6 80:16 86:18 99:22 100:3,14,16 105:1 112:1,4 149:7, 25 165:18 166:14 171:25 176:9,18 184:5 187:1 193:1,6 197:20 214:8 219:13 227:8,20 228:7,23 229:5,14 232:17 234:16	serial 42:22 50:17,18,20,23 57:11,15 58:1,14,21, 24,25 62:3,4 63:8 195:24 196:3,19 201:1,2,3,7,24,25 202:14,17,19,23,25 203:4,19 204:21,23 205:10,23,24 206:6,12 216:3,10,13 217:17 218:1,21 219:3,24 220:3,8,14	SHEA 235:12	sitting 58:15 103:9,21 122:10 123:1 174:23
Securities 2:7 8:16 14:23 29:10 30:4 31:4 32:18 36:8 79:8	services 95:17 96:7 97:14,18 124:24 125:18,25 126:15 127:3	sheet 50:16 65:15,20 67:8 194:9 196:13 208:8 235:21	situation 108:24
security 30:10,12 31:5 32:17, 19,25 33:5,7,25 34:6, 10 36:14,17 39:7 45:23 64:3,19 196:15 197:5 198:10,22 199:11	servicing 109:19 110:19	shift 29:8 160:14	Sleep 3:1
selling 136:14,16 137:17	set 11:1,9,18 26:17 28:13 80:24 89:5 109:3 160:22 171:10 197:2 223:12,23	shifting 185:16	small 68:4 166:7 187:3
send 56:23 144:2 155:7	sets 26:20 149:23	shortly 170:5	smaller 72:20
sending 43:25	setting 97:12 199:9 203:17	show 3:25 75:4 117:25 136:23 146:9 221:9	smooth 116:9
senior 7:3,9,13 70:8	settlement 164:22,24	showed 202:1	Snell 221:6
sense 25:23 38:23 74:9 80:18 94:18 97:13 104:22 129:8 130:7,18 131:6 132:21 162:14 168:8,13 179:11	Seward 17:9 20:23 133:22,24 134:7,18 135:3,6,22 136:2,10,13,15 137:17 138:1,11 139:5,9,25 181:1,10,18,23 182:3, 7 223:19	shown 143:16 220:9	software 27:3 59:2,4,8,10 60:21,23 61:2,12 63:14
sentence 48:11 80:12,22 95:10	Sewkis 180:19	shows 167:17 172:17 189:6 210:3	sold 16:12 87:2 90:16 97:4, 15 118:11 154:15 187:1,7,16,18 208:19 213:19 215:11,20 234:6,9
	share	side 136:23	solely 178:1 207:13
		signatures 67:8,12	solicit 151:15
		significant 164:15 227:24	solicitation 109:17
		significantly 95:12 106:22 107:8	sort 3:16 60:21 101:19 152:16 197:12
		similar 79:1,14 80:1 95:24 96:2 150:13 152:22 170:25 192:11 211:17 217:5	sought 93:14
		simply 148:5 153:13 165:7 167:21 169:23 222:17 233:13 234:19	sound 129:12 131:11,25

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

151:8	49:20,24 50:3,6,10	staying	114:13 117:22 119:24
sounds	59:22 60:8 62:8 64:13	69:7 90:19 196:9	strike
4:5 26:7 28:15 61:9	68:7 194:1,23 201:11	stem	9:2,8 19:5 20:25 23:22
131:17 187:10 213:8	spreadsheets	178:9	28:10 30:24 41:25
219:22	228:5	step	42:13 43:1 48:2 49:4
source	stages	45:7	51:20 52:4 60:14
40:17 41:3,5 208:10	40:20	stick	67:16 74:17 83:17
sources	stamp	146:10	87:19 91:17 94:19
43:4 208:3 227:6	129:16	stipulations	114:7 120:8 123:14
space	stamped	115:21	124:7 128:25 132:5
108:2	16:3	stolen	134:15 136:14 137:12
speaking	stamps	206:8,21 207:7	138:25 141:21 145:12,
18:9 53:10 78:6	127:13	210:12,19 211:3,10	24 148:25 162:9,10,22
177:20 186:22 207:6	stand	stop	167:3 175:22 182:4
specialize	197:21	53:10 62:8 155:23	186:12 192:22 198:20
140:4	standard	storage	202:11 204:25 205:2
specific	214:7	77:8 86:1,2,19,20,21	207:9 209:8
40:6 103:16 165:8	standards	91:2,11,14 94:15	stripped
169:13 185:1 192:1	192:18	100:25 108:2,11,20	208:22
195:5 203:2 231:14	start	116:15,20 117:6,8	strokes
specifically	15:18 53:15 232:1	232:18,19,20	87:12 104:23 142:6
16:24 82:18 87:25	started	store	stub
91:24 109:23 117:17	187:21 226:20	95:19	127:10
153:6 200:22 229:2	starting	stored	subject
speculate	94:9 228:19	89:2 96:19 209:16	40:8 80:23 81:4,13
74:12	state	storing	82:1,8 85:2,16 86:5
Speculation	2:11 25:9 30:12	85:21 209:20,22	132:18 149:9,22 154:1
56:3	209:13	story	172:19 174:15 189:5
speculative	statement	104:8	196:14,16 202:7,8
175:12	36:6,10 37:1,2,7,13	straight	211:24 219:1 233:11
spending	39:6 50:14 67:24	104:9	submit
23:1	106:12 126:15 127:3,9	stream	155:7
spent	statements	26:11 216:24	Subsequently
14:2,6 42:21	120:24 121:15 142:13	streams	191:22
spit	222:14,21 223:1,17,20	183:10	subset
165:13	224:2	Stretto	187:3
spoken	states	86:12 109:15,17,21,25	substance
2:16	226:12 228:20	110:1,6,17 111:9,14,	119:12 146:3,16
spread	status	17,22 112:8 113:17	185:13
44:8 68:13 217:8	207:3	114:2,10 117:12,20	substantially
spreadsheet	stay	Stretto's	226:13
40:4,15,16 44:19,21	70:10 155:25 201:10	112:17 113:3,10,19	subtotal
			232:5 233:8
			subtract

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

187:22	18:7 20:5,9,13,21		tangible
succeed	21:3,7,9 22:19 23:10	T	104:14 145:5
219:8	24:14 28:1,12,16		Tanner
succeeding	31:21,25 33:21 34:11	tab	2:13 14:20
184:5	37:7 82:24 84:12,16,	8:8 14:8,15 19:17	targeting
successful	21 86:23 87:4,8,18,21	21:14,15 23:5 29:16	53:7
112:14 175:9 180:15	88:5,25 90:19 91:19	32:1 33:25 35:22	task
182:3,6 220:12	92:10 94:25 95:15	36:24 39:19,21 43:14	127:14 129:21
sufficient	99:7,16,21,23 100:10,	47:21 51:1 65:5 66:25	Tech
175:10	20 101:5,13,21,25	69:20 78:19 79:9,21	45:16,22 46:6 75:25
suggest	102:1,12 104:17	84:8 92:14 109:6	85:9 115:17 150:9
62:11,21 63:10,15	109:22 111:24 115:6	110:23 116:11 120:3	190:11 230:18
176:8 197:25 206:19	116:12 120:3,9,16,20	123:24 124:4 126:5,18	Tech's
suggested	121:6,25 122:20	127:6 129:14 131:14	118:6
63:20	132:24 133:18 134:6,	133:9 134:20 141:3	teeth
sum	10 136:22 137:1,25	142:19 148:17 154:19	53:14
62:9 168:6,13,16	141:8,24 143:9 144:3,	156:8,22 157:16	telling
summarize	16 146:1 148:2,14,15,	158:3,15 159:1,13	178:5
51:18	19 152:7 153:25	160:15 161:7 162:1,5	ten
summarizes	155:20 156:5,20	164:20 185:17,19,20,	10:1,5 109:4 140:9,10
87:5,21	157:14 158:1,12,23	21 187:25 188:5,9,24,	tenth
summarizing	159:10,22 160:1	25 189:20 190:3	92:24
65:15	167:23,24 169:13	191:11,12,13 193:23,	term
summary	175:9,15 176:9 178:5	25 194:22 200:1	33:6 65:15,20 67:8
10:5 85:5 87:13,19	179:9 180:7,15 181:20	222:3,10 230:2	86:23
127:14 129:21 148:24	182:3,6 184:14,17	takes	terminating
149:2	185:2 191:4 197:3	141:6	81:21
superpriority	209:3 211:10 218:10,	taking	terms
70:8,9	12 219:10 222:6	77:3	65:16 66:6 81:25
support	224:7,16,18 225:10	talk	terrible
5:20,21 12:8 14:21	226:11 227:5 228:13,	13:8,24 118:12	60:14
172:14	20	119:11,16 123:22	test
supporting	surcharged	164:16 169:15 181:22	66:22 228:21
116:12	11:1,9,18 18:3 34:14	185:13	testified
suppose	85:21 86:8 87:5,13	talked	6:8 21:1,3 120:7,9
118:24	149:2,11 154:10	148:23 149:1 150:15	137:8 143:11 209:9
supposed	218:13 219:16 234:21	177:15 181:17 217:2	testify
38:5 46:15	surcharges	talking	6:1,4 9:1,5,17,23 10:7,
surcharge	169:7	15:15 23:8 26:2 36:25	19 11:3,12,20 186:5
10:3,8,16 11:2,10,19	surcharging	80:17 106:6 113:16,17	testifying
12:7,9 14:22,25 15:7,	184:5	118:6 148:13 152:17	43:2
25 16:8,14,17,22 17:5	surrendered	155:18 171:25 178:10	
	54:16 187:1,24	180:2 182:12 185:20	
	Sylvester	220:4	
	157:5,8	talks	
		82:19 189:25	

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

testimony 3:5 6:17 10:2 12:1,23 13:5,12,22 119:12 185:14 223:11 text 15:16,18,25 24:1,6,8 68:5 theft 210:11 thereto 24:2 thing 3:23 4:22 60:24 115:20 170:14 things 42:15 70:12 99:8,17, 20 100:12,19 111:25 115:16 137:22 139:22, 24 152:9 164:7 168:25 169:6,8,15 216:2,5 thinking 64:25 thought 43:11 58:6 127:12 147:8 152:4 214:20 226:20 235:5 thread 43:21 tie 27:3 tied 50:18,21,22 195:24 200:22 time 4:22 18:1 21:21 22:1, 2,15 23:1 24:11,16 28:21 31:17 38:4 39:6 41:24 42:4,9,21 43:12 50:17 51:14 55:13 63:17,18 69:3 75:1 76:17 77:2 82:7 83:4 84:4 101:4,25 102:12 119:18 123:7,19,21 144:4 150:1 163:18	165:9 177:3 178:25 179:21 180:25 181:8 185:17 186:14 190:15 191:21 192:16 194:9 202:1 204:3 206:23 211:18 214:11 227:16 228:3,11 times 26:22 27:8 28:5 title 27:21 today 2:8,22 3:5,6,14 8:21 9:18 10:9,20 11:4,13, 21 13:2,6 14:2 24:17 28:13,18 30:8 32:12 42:16 57:25 80:17 96:24 101:2,20 119:13 122:10 123:2 150:14 155:7,9 163:11,16 192:24 218:6 225:22 227:25 today's 12:1 13:12,22 toggle 165:1,7,12,21,23 told 27:4,11,14 129:11 131:10 180:14 182:2,5 217:7 tomorrow 118:16,20 136:24 tool 164:1,5 169:23 172:12 top 10:1 40:7 44:4 66:20 68:19 72:5 91:23 93:19 120:18 124:19 146:7 149:10 161:5 171:2 183:16 187:20 192:6 205:18 224:11 230:10 232:2 topic 9:12,18 10:1,5,11,22 11:6,13,15,21 30:9,16	32:12 118:25 119:3 151:22 178:1 185:23 186:6 189:23,25 211:19 217:20 topics 8:17 9:2,6,10 10:20 11:4 12:2 53:6 82:16 218:5 225:14 total 14:1,5 34:14 75:3 86:20 87:8 89:4,11,14, 16,17 90:3 91:24 118:7,11 125:6 149:14,17 182:13,15 183:1,2,12 197:1 199:2,15 210:19 230:16 231:23 232:5, 14,19,20,23 233:20 234:6,8,16,18 totalled 231:8 touched 173:14 track 181:21 Trangistics 28:24 86:3,18 90:21, 23,24,25 91:4,10,13, 19,25 92:4 93:6,11,14 94:13,21 95:16,22 96:7 97:5,13,17 98:2, 24 102:6,18 104:20 105:4 106:3,8,17 107:13,19 108:1,10,19 113:17 117:9 165:23 Trangistics' 92:9 95:17 96:11 103:7,13,21 104:12 105:1 107:2 Trangistics's 100:3 transcribing 3:14 transcript 2:1 92:22 93:14 95:5	105:11 106:16 107:17 235:21 trick 58:5 71:7 trouble 55:22 true 21:14,18 24:9 28:12, 18 41:17 42:5 59:1 137:13 152:15 162:16, 22,23 163:11 190:13 192:7 211:2 223:4,24 Tsai 111:6,7 Tucker 143:3 154:25 155:5 223:23 turn 14:8 16:2 23:4 29:16 32:1 35:6,22 39:19 43:14 47:20 50:24 64:23 65:23 69:20 70:17 79:21 84:8,15 92:14 93:2,18 94:6 105:10,20 107:16 109:6 115:18,25 116:10 120:2 123:24 124:18 126:5 129:20 142:19 148:15 154:19 188:9 189:20 190:20 220:23 222:10 224:6, 24 225:18 228:12 230:5 231:16 two-thirds 166:8 type 5:25 46:1 typo 143:7 <hr/> U <hr/> UCC 34:2 36:6,9,25 37:2,6, 12 39:6 44:9,12 48:13
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UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

49:3,8 56:21 60:10 61:10,17,19 62:5,23 63:19 64:19 75:19 179:14 180:19 194:11 198:10,21 199:2,10,14 200:21 201:8,25 204:23 205:24 212:25 216:12 217:16 218:1 220:8 Uh-huh 49:9 uh-huhs 3:24 ultimate 186:11 ultimately 28:7 121:23 139:20 148:10 149:10 150:24 152:15 165:25 176:17 184:11 191:3 197:23 198:5 unable 174:12 178:6 unaware 125:24 uncooperativeness 96:12,14 undergo 154:2 undergoing 55:18 underlying 40:22 191:6 understand 2:10 4:7 8:20,25 9:4 13:16 19:3 29:14 34:22 37:23 48:8 54:24 60:6 61:7 62:1 69:2,14 72:22 73:6 80:15 82:21 84:22 86:23 91:10 94:20 96:2 98:7 100:5 101:7 106:2,12,17 115:17 116:14 122:23 123:5	127:25 128:12,24 129:1 130:3,14 131:2 141:11 143:8 148:12, 13 150:19 151:9 154:7,23 155:10 161:21 171:5 172:6, 11,12 174:5 177:2 178:24 179:20 180:24 181:7 187:12 195:21 196:2 200:12 204:19 210:5 214:23 understanding 23:19 31:10,12,15 35:11 37:17,20 46:4, 18 48:20 49:12 52:16 53:24 54:15 57:12,24 60:17 77:20 90:25 91:6,13 95:11 97:20 104:25 106:21 107:6 121:12 147:25 154:11, 13 155:14 172:20 186:17 202:18 208:13 209:6 211:14 220:17 understood 4:4,10,12,17 5:1 87:11 118:1,23 120:1 149:12 154:18 234:10 undertake 121:25 144:16 unencumbered 46:4 147:8,13,16,19 148:3,8 152:4 153:16 154:3,15 165:25 unexpired 93:1 unhide 195:13 201:16 204:10 205:15 unique 35:15 199:15 203:1,2, 22 216:3 219:4 unit 85:5 units 85:5 86:20 232:19	233:23 235:5 unpaid 86:3 92:5 165:23 182:18,24 unsecured 13:17 133:25 141:16 142:18 unsuccessful 184:18 update 28:5 updated 41:5 44:6 161:18,21, 25 162:9 164:8 184:22 204:5 updating 28:9 USC 124:22 user 165:7,12,20,22 166:25 173:2 174:12,20 177:12 179:5,25 184:23 usual 3:15 <hr/> V <hr/> vacuum 108:25 valid 214:1 validate 41:19 208:24 vandalized 208:16 variant 191:4 variety 16:25 20:17 26:19 176:15 177:8 183:23 184:21 192:12,25	verbal 4:1 verify 38:6 versa 147:20 version 19:12,14 22:11,13 23:9 27:24 28:2 29:22 31:18 32:6,7 33:16,19, 21 36:3,23 37:4,9 40:8 42:8,9 43:10,12 62:5 66:18 71:2,4 150:13 161:23 184:22 189:9 versus 7:9 90:15 209:21 viability 146:6 147:6 151:25 vice 5:7,9 6:21 7:1,10 147:20 226:17 229:11 videoconference 2:17 volume 41:3 <hr/> W <hr/> wait 3:20 waived 115:24 walk 84:24 85:14 walked 24:5 walking 132:14 wanted 58:8 82:19 119:10 154:12 164:8 165:9 221:9
--	--	--	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Tanner James

In re: Cash Cloud Inc.

warehouse 17:20,23 18:1 85:6,10 86:17 88:15 89:1,2,5, 18 91:7,15 94:12 95:12 104:12 106:21 107:3,7,12 108:7,15 117:7 149:14 152:22 201:14 202:4 205:4 220:10 231:7 232:3,23 233:14 234:4,5,20,21 warehoused 209:22 warehouses 77:8 85:10,22 89:7,12, 15 91:5,8 96:16 97:4 202:2 208:22,23 209:10,17 234:9,17,19 warehousing 96:1 ways 58:11 week 68:19 69:5,8,17 71:13 72:18,24 73:8,10 74:19 171:4 weekend 14:4 weeks 40:10 167:2 171:1,3,8, 18 172:7,23 174:6,18 177:5 179:2,22 181:1, 9 Wilmer 221:6 wind 160:21,23 161:18,21, 25 162:9,12 163:7,19 166:21 167:20 169:21 170:1,15,22 Wintana 27:16,20 word 52:24 120:22 131:13 132:2 137:12 234:1	words 30:5 31:1 32:8 36:4 51:19 96:18 216:20 work 5:14 7:21 26:11 53:2 145:12,14,15 150:25 151:3 153:9 183:10 196:10 214:6 216:24 217:20 224:16 worked 5:17,19 40:16 41:4 140:20 working 151:13,14 191:1 192:17 228:3 works 39:13 worksheet 194:24 195:3,11 196:10 201:13 204:7 205:5,12 worksheets 228:5 worth 108:12,21 written 229:23,25 wrong 142:14 153:23 <hr/> Y <hr/> year 7:7 25:23,25 26:2 years 7:20 yesterday 14:3 <hr/> Z <hr/> Zoom 2:16	zooming 186:8	
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Exhibit 5

In re: Cash Cloud Inc.

ROUGH DRAFT TRANSCRIPT OF

Dan Moses

August 23, 2023

THIS REAL-TIME DRAFT IS UNEDITED AND UNCERTIFIED AND MAY
CONTAIN UNTRANSLATED STENO, AN OCCASIONAL REPORTER'S NOTE,
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THIS DRAFT IS INTENDED ONLY FOR THE PURPOSE OF AUGMENTING COUNSEL'S
NOTES AND IS NOT INTENDED TO BE USED OR CITED IN ANY COURT PROCEEDING.

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DRAFT
TRANSCRIPT

IN RE CASH CLOUD DBA COIN CLOUD

DANIEL MOSES

WEDNESDAY, AUGUST 23, 2023

By: Karen L. Jones, NV CCR 694

1 *****ROUGH TRANSCRIPT*****

2 *****ROUGH DRAFT TRANSCRIPT ONLY*****

3

4

5

6 BY MR. KISSNER:

7 Q. Good morning.

8 A. Good morning. Dawn just joined.

9 Q. Dawn Cica?

10 A. Yes.

11 Q. That's Chris's lawyer.

12 My name is Andrew Kissner. I'm with

13 Morrison Foerster. I represent Enigma securities

14 limited and I'm going to ask you a few questions

15 today about Cash Cloud Inc., which hopefully you'll

16 understand me when I refer to it as Coin Cloud or

17 the debtor.

18 A. Understood. It's called many things.

19 MR. MANN: Can we stipulate to

20 objections?

21 MR. KISSNER: Yeah. Certainly. And as

22 with before one stipulate for the record that all

23 objections other than to form of the question are

24 preserved and not waived.

25 Was there anything else?

1 MR. MANN: No.

2 BY MR. KISSNER:

3 Q. Could you please state your name for the
4 record?

5 A. Daniel Moses.

6 Q. And have we ever met before?

7 A. Not in person.

8 Q. We've spoken over a Zoom videoconference
9 call?

10 A. Correct.

11 Q. And have you ever been deposed before?

12 A. No.

13 Q. You haven't?

14 A. (Shakes head in the negative.)

15 Q. Okay. Welcome. And how are you feeling
16 today?

17 A. I feel great. Thank you.

18 Q. Sleep okay?

19 A. (Nods head in the affirmative.).

20 Q. All right. Is there any reason -- and
21 we'll get to that in a second. But is there any
22 reason that you don't think you can give full and
23 complete testimony today?

24 A. I will give testimony to the best of my
25 knowledge.

1 Q. Okay. And, sorry, if this is personal
2 or prying, but are you on any drugs or medication
3 that might affect your ability to recall things?

4 A. I am on no medication at this time.

5 Q. So obviously we're here, you see the
6 court reporter who's going to be taking down
7 everything we say. So there's a couple differences
8 between sort of normal conversation and how a
9 deposition goes that might seem unnatural, but
10 they're sort of key to making sure that we have a
11 clear and concise record, which will also assure you
12 don't have to come back here.

13 The first thing is please provide a
14 clear verbal answer as opposed to a nod or uh-huh or
15 huh-uh because those don't show up very well on the
16 record.

17 A. Understood.

18 Q. I know that in normal conversation, you
19 know, oftentimes we have a sense of the question
20 being asked, we know what's going to be said and so
21 we start talking before you know the before the
22 question is over which is normally fine but in a
23 deposition, again just because we have the court
24 reporter here even if you know what I'm going to say
25 I just ask that you wait for me to finish before

1 answering.

2 A. Understood.

3 Q. And then if you don't understand a
4 question, that's fine, but please just ask me and
5 I'll do my best to rephrase it conversely if you do
6 answer a question, then I'm going to assume that you
7 understood it, fair?

8 A. Understood.

9 Q. And then you might hear objections from
10 your counsel from time to time which is fine.
11 Certain objections he has to raise in order to
12 preserve them. But unless he instructs you not to
13 answer, you should still answer a question even if
14 there's been an objection raised?

15 A. Understood.

16 Q. And then we'll take periodic breaks
17 throughout the deposition including one in about,
18 you know, an hour and change, but please let me know
19 if at any point you feel like you need to take a
20 break, you know, collect your thoughts, go to the
21 restroom, whatever that's totally fine. The only
22 thing that I ask is that if there's a question
23 pending that you answer the question before we take
24 a break.

25 A. Understood.

1 Q. Okay. So with that out of the way,
2 let's just talk a little bit about you and your
3 background before we get to this pile of documents
4 here.

5 So could you tell me who your current
6 employer is?

7 A. I'm employed by Province LLC.

8 Q. And what's your current position at
9 Province?

10 A. I'm a principal and I'm head of
11 institutional creditor advisory.

12 Q. And what are some of your roles and
13 responsibility as principal and I'm sorry head of
14 institutional creditor advisory?

15 A. I represent debtors. I represent
16 lenders. I represent independent directors and
17 provide general investment banking and financial
18 consultancy knowledge base for them.

19 Q. And what are some of the maybe
20 day-to-day tasks that you do in that capacity?

21 A. I generally help oversee teams of people
22 who work on providing information that is needed for
23 each particular assignment in the financial aspects
24 of the case.

25 Q. Would you say that you specialize in a

1 particular area be that an industry vertical or, you
2 know, a sector of investment banking or financial
3 advisory?

4 A. No.

5 Q. No. Okay so you wouldn't say that you
6 only do corporate restructuring for example?

7 A. I do not do personal bankruptcy.

8 Q. Okay but do you do other types of
9 financial advisory work outside of the context of
10 restructuring?

11 A. We from time to time have engagements in
12 nonrestructuring-related advisory work on a
13 consultancy basis.

14 Q. But would it be fair to say that the
15 bulk of your work somehow touches distress or
16 restructuring is that fair?

17 A. Yes. There's a large amount of my work
18 that encompasses December stressed.

19 Q. And among the sort of seats at the table
20 would you say that you spend most of your time
21 representing borrowers, debtors, creditors or an
22 even mix?

23 A. An even mix.

24 Q. Even mix, okay.

25 And when you're retained to, say,

1 represent a debtor is it usually as a financial
2 advisor, as a CRO, as an investment banker?

3 MR. MANN: Objection to form.

4 THE WITNESS: Province is a financial
5 advisory firm, so it's generally in that capacity.

6 BY MR. KISSNER:

7 Q. Okay and how long have you been a
8 principal and head of institutional credit was it?

9 A. I've been there I think it's about
10 shouldn't be the tough question. I think it's like
11 three and a half years.

12 Q. And before that where were you employed?

13 A. How far back would you like to go.

14 Q. Immediately before you were a principal
15 at Province?

16 A. I ran my own firm called Pacific Creek
17 Capital for about eight years.

18 Q. What was your role there?

19 A. I was owner and principal.

20 Q. And what did Pacific Creek do?

21 A. Pacific Creek was an investment firm I
22 object vesting in distressed assets.

23 Q. Would it be fair to call it a hedge
24 fund?

25 A. No.

1 Q. Okay.

2 A. Investment management is a better word.

3 Q. Was it investments -- Sorry. Strike

4 that.

5 Was it you know proprietary investments
6 or was it managing investments on behalf of clients?

7 A. It was both.

8 Q. It was both, okay. And how long were
9 you there, did you say eight years?

10 A. 8 years.

11 Q. Eight years. Okay and before that?

12 MR. MANN: Objection to form.

13 THE WITNESS: Before that I was at a
14 firm called partners fund in San Francisco.

15 BY MR. KISSNER:

16 Q. And what did partners fund do?

17 A. They were a long short equity fund.

18 Q. So closer to a hedge fund?

19 A. Yes, they were a hedge fund.

20 Q. What was your title there?

21 A. Managing director.

22 Q. And your roles and responsibilities as
23 managing director?

24 A. I was responsible for helping invest
25 their credit portfolio.

1 Q. And did you guys have a particular you
2 said long short?

3 A. On the equities.

4 Q. On the equity side. Okay. So
5 performing investments or?

6 A. For the credit side?

7 Q. Sorry. Strike that.

8 Did you also do credit work or only
9 equities?

10 A. I did only credit or 90 percent credit.

11 Q. So long short on the equity side and
12 then what was the credit strategy?

13 MR. MANN: Objection to form.

14 THE WITNESS: They had a -- they had a
15 carve out to invest in credit.

16 BY MR. KISSNER:

17 Q. Performing credit distressed credit?

18 A. All types of credit.

19 Q. Why did you leave Pacific Creek?

20 A. It was just time.

21 Q. It was just time?

22 A. Uh-huh.

23 Q. Okay. Is Pacific Creek still in
24 operation?

25 A. No.

1 Q. How did Pacific creek do?

2 MR. MANN: Objection to form.

3 THE WITNESS: I had a very successful
4 business.

5 BY MR. KISSNER:

6 Q. Okay. Do you miss it?

7 MR. MANN: Objection to form.

8 THE WITNESS: I'm very happy at where
9 I'm employed at the moment.

10 BY MR. KISSNER:

11 Q. Okay. So you said that Province, they
12 do some investment banking work but primarily
13 financial advisors; is that fair?

14 MR. MANN: Objection to form.

15 THE WITNESS: Province is known as a
16 crossover firm so they do both financial advisory
17 and investment banking work.

18 BY MR. KISSNER:

19 Q. We'll talk about Coin Cloud in a minute.

20 In the past have you ever run a sales
21 and marketing process for a debtor's assets in
22 Chapter 11?

23 A. Not as a debtor advisor, no.

24 Q. Have you ever run a sales and marketing
25 process for a debtor's assets in Chapter 11 other

1 than as a debtor advisor?

2 A. No.

3 Q. No, okay. And I apologize in advance
4 for some reason when this binder got printed the
5 notice of deposition was all the way at the back so
6 I'm going to ask you to turn to Tab 48 and maybe
7 just for ease you can pop it out and put it at the
8 front, but I leave that to you. And I'll ask this
9 be marked as Exhibit 1?

10 (Exhibit 1 marked.)

11 MR. MANN: What tab number was that
12 again.

13 MR. KISSNER: It was 48.

14 THE WITNESS: 48?

15 MR. KISSNER: Yeah.

16 BY MR. KISSNER:

17 Q. Do you recognize this document?

18 A. I don't recall this document.

19 Q. Do you mind reviewing it for a second?

20 A. Sure.

21 Q. Can you tell me what it appears to be?

22 A. Topics for examination.

23 Q. Do you understand that you're appearing
24 here today pursuant to this Exhibit 1?

25 A. I do.

1 Q. Okay. But you haven't reviewed it
2 before?

3 A. I've reviewed the summary form.

4 Q. Could you please turn to page 2 of
5 Exhibit 1?

6 A. Absolutely.

7 Q. Okay. So do you see that there's a
8 number of topics listed here?

9 A. I do.

10 Q. Okay. And do you understand that you're
11 here to testify as a representative of the debtor
12 regarding certain of these topics?

13 A. I do.

14 Q. Okay. And do you understand that your
15 testimony on these topics, it's binding on the
16 debtor?

17 A. I understand.

18 Q. And then you understand that as the
19 debtor's representative you're required to testify
20 regarding information that is known or reasonably
21 knowable or reasonably available to the debtor
22 regarding these topics, correct?

23 A. Understood.

24 Q. Okay. Could you turn your attention to
25 topic six and read that?

1 A. The sales and marketing process for the
2 sale substantially of all of Coin Cloud's assets.

3 Q. And are you prepared to testify about
4 this topic today?

5 A. I am.

6 Q. Okay. And could you read topic seven?

7 A. The conduct of the auction conducted on
8 June 2nd, 2023, for Coin Cloud's assets.

9 Q. And are you prepared to testify on
10 behalf of the debtor on topic seven today?

11 A. I am.

12 Q. Okay. And then could you read topic
13 eight, please?

14 A. Any analysis evaluation or assessment of
15 the digital currency machines sold to Heller
16 Capital.

17 Q. And are you prepared to testify on
18 behalf of the debtor with respect to topic eight
19 today?

20 A. Yes.

21 Q. Do you have personal knowledge about
22 each of these topics?

23 A. I have knowledge about each of these
24 topics.

25 Q. You said do you have knowledge of about

1 each of these topics do you have personal knowledge
2 about each of these topics?

3 A. I don't understand the difference.

4 Q. Do you -- fair.

5 Do you have knowledge based off of your
6 personal recollections or interactions with respect
7 to the subject of these topics?

8 A. Yes.

9 Q. Okay. And in preparing to testify today
10 as a representative of the debtor, did you
11 supplement that personal knowledge in any way?

12 A. To prepare for the deposition, I looked
13 at the DIP documents again. I looked at the APA
14 again. I looked at the Province invoices again.

15 Q. Anything else?

16 A. And I looked at the bid procedure
17 document again.

18 Q. And did those documents help you refresh
19 your recollection of certain matters?

20 A. It did.

21 Q. Okay. And did you have discussions with
22 anybody at the debtor to prepare for today's
23 testimony?

24 MR. MANN: Objection to form.

25 BY MR. KISSNER:

1 Q. I'll strike that.

2 Did you have discussions with any
3 employees of the debtor in preparation for today's
4 testimony?

5 A. No.

6 Q. No. Did you have discussions with
7 anybody else at Province in preparation for today's
8 testimony?

9 A. Yes.

10 Q. Who did you speak with?

11 A. Paul Huygens, Tanner James.

12 Q. What did you guys talk about?

13 MR. MANN: Objection to form.

14 THE WITNESS: Conduct and form.

15 BY MR. KISSNER:

16 Q. And did you have any discussions with
17 anybody representing or relating to the creditor's
18 committee preparing for today?

19 A. I did not.

20 Q. And just to be clear when I say
21 creditor's committee you understand me to refer to
22 the official committee of unsecured creditors of
23 Cash Cloud Inc.?

24 A. I understand.

25 Q. So other than talking to employees at

1 Province, did you have discussions with anybody else
2 in preparation for this testimony?

3 MR. MANN: Objection to form.

4 THE WITNESS: My -- our counsel co Fox
5 Rothschild.

6 BY MR. KISSNER:

7 Q. How long would you say you spent in
8 total preparing for today's testimony?

9 A. I'd say a couple hours.

10 Q. A couple hours?

11 A. (Nods head in the affirmative.)

12 Q. Let's talk a little bit about the
13 retention of Province by the debtor. Okay. Great.

14 When were you retained?

15 A. January -- my recollection is
16 January 2023.

17 Q. Okay. And do you recall what the scope
18 of your retention was?

19 A. Financial advisor for the debtor.

20 Q. Were you also retained to be an
21 investment banker for the debtor?

22 A. We retained to all services from
23 financial advisory through investment banking.

24 Q. How would you describe those services.

25 MR. MANN: Objection to form.

1 THE WITNESS: We -- you know, as a
2 financial advisor, we would go in, analyze the
3 company, work with management and try to help figure
4 out the best way for reorganization of that company.

5 BY MR. KISSNER:

6 Q. Okay. And that description is of
7 financial advisory services or --

8 A. It's both.

9 Q. What would you say the difference
10 between an investment banker and a financial advisor
11 is?

12 MR. MANN: Objection to form.

13 THE WITNESS: I don't think there's any
14 difference.

15 BY MR. KISSNER:

16 Q. You don't think there's any difference?

17 A. Not much.

18 Q. You've been -- sorry go ahead?

19 A. They have different task but you know
20 they're all generally studying financial knowledge
21 of a company.

22 Q. How do you think the tasks differ
23 between a financial advisor and an investment
24 banker.

25 MR. MANN: Objection to form.

1 THE WITNESS: A financial advisor really
2 digs deeply into the operations of the company and
3 puts together everything from 13-week cash flows to
4 budgets and really goes through the financials of
5 the company on a daily basis.

6 An investment banker is working on
7 strategy, working with those same financial analysis
8 to figure out what the best course of action whether
9 it be a straight reorganization or a sale or
10 whatever is the best way to go in order to maximize
11 value for all creditors.

12 BY MR. KISSNER:

13 Q. Now, at Province are there different
14 teams that specialize in -- Strike that.

15 At Province are there different
16 investment banking and financial advisory teams?

17 A. No.

18 Q. No. Who else worked with you at
19 Province on this retention or on this engagement
20 rather?

21 MR. MANN: Objection.

22 THE WITNESS: Paul Huygens who was
23 founder of the firm and I guess key principal.
24 Tanner James and Spencer Stires.

25 BY MR. KISSNER:

1 Q. Now, Mr. Huygens would you say that he
2 specializes in a particular area of practice?

3 MR. MANN: Objection to form.

4 THE WITNESS: We all work on many
5 different engagements.

6 BY MR. KISSNER:

7 Q. Would you consider him an investment
8 banker?

9 MR. MANN: Objection to form.

10 THE WITNESS: I consider everybody in
11 the firm can act as a financial advisor or an
12 investment banker or both.

13 BY MR. KISSNER:

14 Q. And Mr. James, would you consider him a
15 expert in investment banking or financial advisory
16 work?

17 MR. MANN: Objection to form.

18 THE WITNESS: Everybody has the same
19 tasks where they work on both.

20 BY MR. KISSNER:

21 Q. Same question for Mr. Stires, is it?

22 A. Yes.

23 MR. MANN: Objection to form.

24 THE WITNESS: Yes. We are a crossover
25 firm.

1 BY MR. KISSNER:

2 Q. Do you recall what your fees -- what
3 your fee arrangement was in this case?

4 A. I do.

5 Q. Can you describe it?

6 A. We are we were employed as an hourly an
7 on an hourly rate with a success fee of certain of
8 the sale of the assets.

9 Q. So would it be fair to say that a
10 portion of your fees are contingent?

11 A. Yes.

12 Q. And they're contingent upon a successful
13 transaction?

14 A. Correct.

15 Q. Would it be fair to say that your fees
16 are higher if the amount received by the company is
17 higher and lower if the amount received by the
18 company is lower?

19 MR. MANN: Objection to form.

20 THE WITNESS: For a portion.

21 BY MR. KISSNER:

22 Q. For a portion.

23 A. Uh-huh.

24 Q. Could you describe what you mean by
25 that?

1 A. The majority of our work is done on an
2 hourly basis.

3 Q. Did your fees -- strike that.

4 Did the amount of your fees depend on
5 the form in which a transaction took?

6 MR. MANN: Objection to form.

7 THE WITNESS: No.

8 BY MR. KISSNER:

9 Q. No?

10 A. (Shakes head in the negative.).

11 Q. So would you have received the same
12 amount of consideration in a sale versus a plan
13 sponsorship transaction?

14 MR. MANN: Objection to form.

15 THE WITNESS: I don't recall.

16 BY MR. KISSNER:

17 Q. Okay. And did your fee depend on the
18 identity of your transaction counterparty?

19 MR. MANN: Objection to form.

20 THE WITNESS: No.

21 BY MR. KISSNER:

22 Q. Why don't we turn in our binder to Tab 6
23 which I'll ask be marked as Exhibit 2.

24 (Exhibit 2 marked.)

25 BY MR. KISSNER:

1 Q. Do you recognize this document?

2 A. I've -- I have never seen this document
3 before.

4 Q. Can you tell me what it appears to be?

5 A. An engagement letter of Province.

6 Q. Engagement letter between?

7 A. Province and Cash Cloud or Coin Cloud.

8 Q. But you've never seen this document
9 before?

10 A. No the signature and Paul Huygens.

11 Q. Okay but you've never reviewed it?

12 A. I've never reviewed it.

13 Q. Could you turn to the second page and
14 could you turn to paragraph 2 entitled compensation.
15 Do you see that?

16 A. I do.

17 Q. And could you just read that to yourself
18 you don't have to read it out loud but just read
19 starting at paragraph 2 all the way to the end of
20 subsection C and just let me know when you're done.

21 A. Sure. I'm finished, Andrew.

22 Q. Could you just describe in your own
23 words what you understand paragraph 2 of this
24 engagement letter to me?

25 MR. MANN: Objection to form.

1 THE WITNESS: Paragraph 2 subsection
2 compensation lays out the different ways that a
3 professional in our business could get paid.

4 BY MR. KISSNER:

5 Q. Okay. Is that it?

6 A. Uh-huh.

7 Q. Could you tell me what an arranger fee
8 is?

9 MR. MANN: Objection to form.

10 THE WITNESS: Arranger fee is typically
11 put in place when you have a DIP financing.

12 BY MR. KISSNER:

13 Q. Okay. So that's typically what an
14 arranger fee means. Could you look at paragraph 2B
15 here. And do you see where it says an arranger fee?

16 A. Uh-huh.

17 Q. Could you tell me what you understand an
18 arranger fee to mean in the context of this
19 document?

20 MR. MANN: Objection to form and I'll
21 object to he's appearing today we went through the
22 items of six, seven, and eight I don't know how this
23 terms of engagement him knowing arranger fee if the
24 context of this document ties into anything.

25 MR. KISSNER: Come not you don't think

1 the terms by which they were going to get paid was

2 relevant to the conduct of the auction and the

3 conduct of the sale. Just laying a foundation here.

4 If you're going to object to form to everything, so.

5 BY MR. KISSNER:

6 Q. You can answer. If you don't remember,

7 I can read back the question.

8 A. The arranger fee is relevant for a DIP

9 financing as I previously stated.

10 Q. Okay. How is it relevant?

11 MR. MANN: Objection to form.

12 THE WITNESS: Province would receive a

13 fee if we arrange for the party who provides the

14 DIP.

15 BY MR. KISSNER:

16 Q. And there's a term here it says a

17 Province lender. Do you see that?

18 A. Uh-huh.

19 Q. Do you have an understanding what at

20 that term means?

21 MR. MANN: Objection to form.

22 THE WITNESS: Typically a Province

23 lender is someone who we bring in as a third party

24 that the company does not have a prior relationship

25 with.

1 BY MR. KISSNER:

2 Q. So is the idea that you wouldn't receive
3 a fee for a transaction consummated by a party
4 Province didn't bring to the table is that fair?

5 MR. MANN: Objection to form.

6 THE WITNESS: Please define transaction?

7 BY MR. KISSNER:

8 Q. Sure. So this letter says that Province
9 will earn an arranger fee if it arranges financing
10 with a Province lender and you said that a Province
11 lender is a lender that Province identified for the
12 company fair?

13 MR. MANN: Objection to form.

14 THE WITNESS: That would be correct.

15 BY MR. KISSNER:

16 Q. So is the idea then that if Province
17 didn't find the lender, Province wouldn't earn a
18 fee?

19 MR. MANN: Objection to form.

20 THE WITNESS: Correct.

21 BY MR. KISSNER:

22 Q. Could you take a subparagraph C
23 restructuring fee and can you go to the third line
24 that begins that may become due hereunder and then
25 read the portion beginning with the company, please.

1 A. The company shall pay Province a fee in
2 United States dollars in the amount of three percent
3 of the value of all debt and equity financing of the
4 company as of the effective date.

5 Q. Keep going.

6 A. Provided, however, should all or a
7 portion of the exit financing be provided by
8 Province lender, then such Province lender exit
9 financing, whether through equity or debt financing
10 the company shall pay Province a fee in the United
11 States, in the amount of one and a half percent of
12 such Province lender exit financing, with any other
13 exit financing generating a three percent fee as
14 otherwise indicated above.

15 Q. Could you explain in your own words what
16 you understand that to mean?

17 MR. MANN: Objection to form.

18 THE WITNESS: Effectively Province is to
19 receive a three percent of fee on the value of all
20 debt equity financing of the company as the
21 effective date.

22 BY MR. KISSNER:

23 Q. Could you explain what you understand
24 the proviso in that paragraph to mean?

25 MR. MANN: Objection to form.

1 THE WITNESS: Can you please read the
2 proviso so I know what you're referring to.

3 BY MR. KISSNER:

4 Q. The portion you just read that began
5 provided however?

6 A. That we're going to receive a one and a
7 half percent fee if it's a Province lender.

8 Q. And if it's not a Province lender you'd
9 receive a different fee?

10 A. It says three percent.

11 Q. Okay. Help me understand why would you
12 have gotten paid more if exit financing was provided
13 by somebody who wasn't a Province lender?

14 MR. MANN: Objection to form.

15 THE WITNESS: I did not negotiate the
16 fees here.

17 BY MR. KISSNER:

18 Q. Fair enough. Before -- do you recall I
19 asked you if the amount of consideration you'd
20 receive in this matter depended on the identity of
21 the counterparty?

22 A. I remember.

23 Q. Does this refresh your recollection as
24 to whether the amount of compensation Province
25 received in this engagement depended on the identity

1 of the counterparty?

2 MR. MANN: Objection to form.

3 THE WITNESS: Yes, this is standard.

4 BY MR. KISSNER:

5 Q. Okay. But to be clear, the amount of
6 consideration was contingent upon the identity of
7 the party providing financing?

8 MR. MANN: Objection to form.

9 THE WITNESS: That's correct.

10 BY MR. KISSNER:

11 Q. And as you understand it, under this
12 engagement letter, had there been an asset sale
13 would that have triggered a restructuring fee?

14 MR. MANN: Objection form.

15 THE WITNESS: I think the answer would
16 be yes.

17 BY MR. KISSNER:

18 Q. And why is that?

19 MR. MANN: Objection to form.

20 THE WITNESS: I think that could be
21 considered a form of financing, an asset sale.

22 BY MR. KISSNER:

23 Q. All right why don't we turn to Tab 7
24 which I'll mark as or I'll ask the court reporter to
25 mark as Exhibit 3.

1 (Exhibit 3 marked.)

2 BY MR. KISSNER:

3 Q. Do you recognize this document?

4 A. I have seen many final retention orders.

5 Q. But do you recognize this document?

6 A. I have not read -- I have not read this
7 document.

8 Q. Okay. If you'd like feel free to take a
9 minute to review it and let me know when you're
10 done.

11 A. I am familiar with the document.

12 Q. Could you just tell me what it appears
13 to be?

14 A. It appears to be the final order
15 representing our Province engagement letter.

16 Q. And could you turn to page 3 and could
17 you look at paragraph 2 and can you just read that
18 to yourself and could you tell me what you
19 understand paragraph 2 to mean?

20 A. That the debtor is authorized to pay
21 Province a fee in the amount of three percent of the
22 amount of funds agreed to be loaned by any lender
23 secured by Province in support of debtor in
24 possession of financing.

25 Q. So that was the court approving the

1 arranger fee that was in the Province engagement
2 letter, fair?

3 MR. MANN: Objection to form.

4 THE WITNESS: It appears to be.

5 BY MR. KISSNER:

6 Q. And could you read paragraph 3 to
7 yourself.

8 A. Okay.

9 Q. What do you understand paragraph 3 to
10 mean?

11 A. It looks like it's the final order of
12 the engagement letter.

13 Q. So the court approving the restructuring
14 fee in the engagement letter fair?

15 MR. MANN: Objection to form.

16 THE WITNESS: Correct.

17 BY MR. KISSNER:

18 Q. Okay. Could we turn to Tab 8 which I'll
19 ask the court reporter to mark as Exhibit 4.

20 (Exhibit 4 marked.)

21 BY MR. KISSNER:

22 Q. Do you recognize this document?

23 A. I have not read this document.

24 Q. Have you ever seen it before?

25 A. No.

1 Q. Well, take a look and tell me when
2 you're done.

3 A. I am aware of the issue.

4 Q. Could you tell me what this document
5 appears to be?

6 A. This document is an amendment or a
7 clarification to the order that was originally filed
8 based on comments from the trustee and the UCC.

9 Q. Do you know who negotiated this on
10 behalf of Province?

11 A. Paul Huygens.

12 Q. Okay. So you said that this appears to
13 be a modification or amendment to the original
14 retention order, fair?

15 A. Clarification.

16 MR. MANN: Objection to form.

17 BY MR. KISSNER:

18 Q. What's a clarification?

19 A. It was a clarification that was asked
20 for by the UCC.

21 Q. What were they asking to be clarified?

22 A. The definition of the incentive fee.

23 Q. If you know, can you tell me what the
24 committee said was unclear about the definition of
25 incentive fee?

1 A. I can read you paragraph K on page 3.
2 Given the lack of clarity as to whether
3 a restructuring fee is earned upon consummation of
4 any Section 363 asset sale and the parties' concerns
5 that the estate may not be benefiting by
6 incentivizing reorganization over an asset sale,
7 the parties agree to resolve any lack of clarity
8 regarding the restructuring fee and its calculation
9 as stipulated herein.

10 Q. So this was what we were talking about
11 before, the lack of clarity as to whether Province
12 would earn a fee upon an asset sale?

13 MR. MANN: Objection to form.

14 THE WITNESS: Yes.

15 BY MR. KISSNER:

16 Q. Now, when Province was retained, were
17 you asked to pursue any particular form of
18 transaction?

19 A. No.

20 Q. No. Okay. Just a transaction that
21 would be good for the company?

22 A. That's where you start.

23 Q. Could you and you're already at page 3
24 which is Bate stamped and ending 126. Can you go to
25 paragraph 1 and read that to yourself.

1 A. Will you repeat?

2 Q. If you go to paragraph 1 on the current
3 page which is Bate stamped 126?

4 A. Okay.

5 Q. Read it to yourself. Do you understand
6 this paragraph to be approving the restructuring
7 fee?

8 A. Please define?

9 Q. Well, do you see on line 18 of this
10 document where there's a defined term "restructuring
11 fee"?

12 A. That is what's being stipulated.

13 Q. So you understand this paragraph to be
14 approving the restructuring fee?

15 A. This is what's being stipulated.

16 Q. Okay. Is there a reason that you're
17 saying stipulated versus approved?

18 MR. MANN: Objection to form.

19 THE WITNESS: The document says
20 stipulation.

21 BY MR. KISSNER:

22 Q. Okay. Fair.

23 Do you understand this restructuring fee
24 to be different from that approved in the prior
25 retention order?

1 MR. MANN: Objection to form.

2 BY MR. KISSNER:

3 Q. And to be clear we're just talking about
4 the restructuring fee.

5 A. This looks very similar to the
6 engagement letter.

7 Q. Do you see anything that's different or?

8 A. Not off the top of my head.

9 Q. Not a trick question?

10 A. No, just not off the top of my head.

11 Q. Okay. Could you turn to page 4 which is
12 Bate stamped 127. And can you read paragraph 2 to
13 yourself and let me know when you're done.

14 A. I am finished.

15 Q. Could you tell me what paragraph 2 says
16 in your own words?

17 A. That Province will receive three percent
18 of any sales proceeds from an asset sale under a 363
19 order with a cap of 500,000.

20 Q. So this paragraph is clarifying the
21 ambiguity as to whether Province would be entitled
22 to a fee in a sale, fair?

23 A. Correct.

24 Q. And these changes, they were requested
25 by the committee.

1 A. Correct.

2 Q. And could you read paragraph 3 to
3 yourself and let me know when you're done.

4 A. (Indicating.)

5 Q. And just remember to say "yes" or "no"?

6 A. Finished.

7 Q. Thank you. I know it's awkward. Could
8 you tell me what paragraph 3 says in your own words?

9 A. There's a cap of \$500,000 on any asset
10 sale.

11 Q. Who requested this cap?

12 A. I have no knowledge.

13 Q. Okay. Do you understand Province's fees
14 to have been capped under the prior engagement
15 letter and order?

16 MR. MANN: Objection to form.

17 THE WITNESS: No.

18 BY MR. KISSNER:

19 Q. You don't. But through this document
20 there was now a cap at \$500,000?

21 MR. MANN: Objection to form.

22 THE WITNESS: Correct.

23 BY MR. KISSNER:

24 Q. Did you ever talk to anybody else at
25 Province about this?

1 MR. MANN: Objection to form.

2 THE WITNESS: Paul Huygens.

3 BY MR. KISSNER:

4 Q. What did you talk to Paul Huygens about
5 regarding this fee cap?

6 MR. MANN: Objection to form.

7 THE WITNESS: He informed me that this
8 was being put in place.

9 BY MR. KISSNER:

10 Q. What was your reaction to learning there
11 was a cap on fees?

12 MR. MANN: Objection to form.

13 THE WITNESS: No reaction.

14 BY MR. KISSNER:

15 Q. And what was his mood like would you say
16 when you had that conversation?

17 MR. MANN: Objection to form.

18 THE WITNESS: No reaction.

19 BY MR. KISSNER:

20 Q. Did the imposition of cap on fees impact
21 your work at all in the Coin Cloud engagement?

22 A. No.

23 Q. Before Province was retained do you know
24 if there had been a investment bank or a financial
25 advisor retained before you?

1 MR. MANN: Objection to form.

2 THE WITNESS: Coin Cloud has had many
3 advisors over the years.

4 BY MR. KISSNER:

5 Q. Are there any of which you're aware of
6 off the top of your head?

7 A. M3.

8 Q. And M3 refers to M3 Partners?

9 A. Yes.

10 Q. Okay. Does the debtor currently employ
11 M3?

12 A. No.

13 Q. Do you know why not?

14 MR. MANN: Objection to form.

15 THE WITNESS: I have no knowledge to
16 that, no knowledge on that topic.

17 BY MR. KISSNER:

18 Q. So you have no understanding as to why
19 they no longer work for Coin Cloud?

20 MR. MANN: Objection to form.

21 THE WITNESS: Correct.

22 BY MR. KISSNER:

23 Q. Do you know if M3 was engaged as a
24 financial advisor, investment banker or both?

25 MR. MANN: Objection to form.

1 THE WITNESS: I have no knowledge of
2 M3's engagement.

3 BY MR. KISSNER:

4 Q. Do you know if they contacted any
5 parties regarding a transaction?

6 MR. MANN: Objection to form.

7 MR. KISSNER: Just asking his knowledge.

8 THE WITNESS: I don't recall.

9 BY MR. KISSNER:

10 Q. Are you aware of any other financial
11 advisors or investment bankers that were retained by
12 Coin Cloud other than M3?

13 A. I don't recall.

14 Q. Do you know if B. Riley was ever
15 employed by the debtor?

16 A. B. Riley was.

17 Q. Do you know if B. Riley is currently
18 employed by the debtor?

19 MR. MANN: Objection to form.

20 THE WITNESS: No, they are not.

21 BY MR. KISSNER:

22 Q. They're not.

23 Do you have an understanding as to why
24 B. Riley is no longer employed by the debtor?

25 MR. MANN: Objection to form.

1 THE WITNESS: No I have no knowledge.

2 I'll slow down too.

3 BY MR. KISSNER:

4 Q. Do you know if B. Riley contacted any
5 parties regarding a transaction with the debtor?

6 MR. MANN: Objection to form.

7 THE WITNESS: No knowledge.

8 BY MR. KISSNER:

9 Q. Do you know did your -- strike that.
10 You said before that your ability to earn a fee
11 under the engagement letter, the retention order and
12 then the retention order as modified by the
13 stipulation, I think I have that right, that was
14 dependent upon whether Province had located the
15 relevant counterparty?

16 MR. MANN: Objection to form.

17 BY MR. KISSNER:

18 Q. ; is that correct?

19 A. On the financing, correct.

20 Q. What about on the sale strike that.

21 Okay. Could you turn back to Tab 8 I
22 guess you still have it to paragraph 2 at the top of
23 the page which discusses a restructuring fee for a
24 sale transaction, right?

25 MR. MANN: Objection to form.

1 THE WITNESS: Okay.

2 BY MR. KISSNER:

3 Q. Do you understand your ability to earn a
4 restructuring fee on a sales transaction depended
5 upon whether Province had located the buyer or not?

6 MR. MANN: Objection to form.

7 THE WITNESS: It does not address that
8 in that line.

9 BY MR. KISSNER:

10 Q. Okay. But outside of the four corners
11 of this document, are you aware of whether the
12 ability to earn a fee on a sale was dependent upon
13 the identity of the buyer?

14 MR. MANN: Objection to form.

15 THE WITNESS: I don't recall.

16 BY MR. KISSNER:

17 Q. What time is it? Okay. So we'll zoom
18 out a little bit and stop looking at this for a
19 minute.

20 Are you familiar with what a stalking
21 horse is?

22 A. I am.

23 Q. Can you explain what a stalking horse
24 is?

25 A. Stalking horse is in a transaction is

1 the buyer who is given certain protections because
2 they were the first one to actually bid that the
3 debtor agreed to.

4 Q. So a stalking horse is someone -- what's
5 a good word? -- obtained in connection with the
6 sale process fair to say?

7 MR. MANN: Objection to form.

8 THE WITNESS: You're not very clear I'm
9 not sure what you're saying with the word obtain.

10 BY MR. KISSNER:

11 Q. Fair. It's not a great verb.

12 A stalking horse would be involved in a
13 sale process; is that fair to say?

14 A. A stalking horse is an interested party.

15 Q. With respect to a sale, though?

16 A. Correct.

17 Q. And do you know what a 363 sale is if I
18 refer to that term?

19 A. I do.

20 Q. Could you explain what that is?

21 A. A 363 sale is done through a bankruptcy
22 process within the court process, all assets are
23 sold and the liabilities are left behind. In
24 simplistic terms.

25 Q. And is it common for there to be a

1 stalking horse in your experience as an interested
2 party in a 363 sale?

3 A. Successful 363 sales typically have a
4 stalking horse.

5 Q. And do you know what the term plan
6 sponsor refers to?

7 A. I do.

8 Q. Can you explain what that is?

9 A. In a plan of reorganization, it's
10 somebody who injects -- typically injects capital to
11 help the company reorganize.

12 Q. Is there a plan sponsor in your
13 experience typically involved in a 363 sale?

14 A. No. They're typically separate.

15 Q. Is there typically a stalking horse in a
16 plan sponsor process?

17 A. There can be.

18 Q. Is a plan sponsor and a stalking horse
19 different or are they more or less the same
20 concepts?

21 MR. MANN: Objection to form.

22 THE WITNESS: They are different
23 concepts but related.

24 BY MR. KISSNER:

25 Q. Could you elaborate on that?

1 A. A you know a plan sponsor can come
2 typically in two forms. One which is the debtor and
3 the company agree to an individual as a plan sponsor
4 or an institution or number two is sometimes a plan
5 sponsor is effectively a buyer of the assets through
6 a plan construct. And is more of a stalking horse
7 where other people have the ability to actually
8 compete for that same plan sponsor?

9 Q. Can you tell me if you know why might a
10 debtor strike that.

11 Are there reasons why in your experience
12 a debtor might prefer a plan sponsor versus a 363
13 sale?

14 MR. MANN: Objection to form.

15 THE WITNESS: They are different
16 concepts. Typically a plan sponsor in a plan or
17 reorganization means the existing company emerges
18 from bankruptcy.

19 A 363 is an asset sale.

20 BY MR. KISSNER:

21 Q. After an asset sale, is it typical for
22 existing management to remain in place?

23 MR. MANN: Objection to form.

24 THE WITNESS: Every situation is
25 different. I will not generalize.

1 BY MR. KISSNER:

2 Q. About how many -- if you can ballpark,
3 about how many engagements have you been involved
4 with advising a debtor through a restructuring
5 process?

6 A. I don't recall.

7 Q. More than ten?

8 A. I don't recall. I don't want to state
9 things on the record that I don't have the
10 information on. Happy to come back with you on
11 that.

12 Q. Okay. Would it be fair to say it's been
13 a lot?

14 MR. MANN: Objection to form.

15 THE WITNESS: I have been a
16 restructuring advisor for three and a half years and
17 I've worked on numerous engagements.

18 BY MR. KISSNER:

19 Q. Have you ever been -- strike that.
20 Have you ever worked on an engagement in
21 which there's a 363 sale after which management
22 remained in place?

23 MR. MANN: Objection to form.

24 THE WITNESS: Not at Province, no.

25 BY MR. KISSNER:

1 Q. How about before Province?

2 MR. MANN: Objection to form.

3 THE WITNESS: I've only been a
4 restructuring advisor for three and a half years in
5 this capacity.

6 BY MR. KISSNER:

7 Q. Conversely is it typical in a plan
8 sponsor transaction for management to remain in
9 place?

10 MR. MANN: Objection to form.

11 THE WITNESS: Varies. Every situation's
12 different there is no -- there is no hard and fast
13 answer. Every situation is different.

14 BY MR. KISSNER:

15 Q. Have you ever advised a debtor through a
16 restructuring process that involved a plan
17 sponsorship or plan of reorganization?

18 MR. MANN: Objection to form.

19 THE WITNESS: Can you expand on your
20 definition?

21 BY MR. KISSNER:

22 Q. Sure. So you've advised debtors in
23 connection with restructurings before, correct?

24 A. Uh-huh.

25 Q. And those restructurings have presumably

1 involved some sort of transaction, fair?

2 MR. MANN: Objection to form.

3 THE WITNESS: I have -- okay. Trying to
4 figure out what you're asking.

5 BY MR. KISSNER:

6 Q. I'm asking if you've ever advised a
7 debtor on a transaction that took the form of a plan
8 of reorganization?

9 MR. MANN: Objection to form.

10 THE WITNESS: No.

11 BY MR. KISSNER:

12 Q. No. Okay.

13 So we've been talking about advising
14 debtors, right. I believe you said before that
15 you've also advised creditors?

16 A. Correct.

17 Q. Would it be fair to say that as a
18 principal, you've also been involved in
19 restructurings as a creditor?

20 MR. MANN: Objection to form.

21 THE WITNESS: I have.

22 BY MR. KISSNER:

23 Q. And we talked a little bit about from
24 the debtor's perspective the differences between a
25 363 sale and a plan sponsor transaction, right?

1 A. Yeah.

2 Q. Could you tell me why in your experience
3 a creditor might have a preference as to a plan
4 sponsorship versus a 363 sale?

5 MR. MANN: Objection to form.

6 THE WITNESS: The creditor has the same
7 incentive as the debtor's advisor, which is the
8 maximize value for individual creditors and the
9 estate as a fiduciary.

10 BY MR. KISSNER:

11 Q. In your experience does the form of
12 transaction affect the ability to maximize value?

13 A. No.

14 Q. No. Now when Province was engaged, you
15 said that there was no particular mandate for a
16 specific type of transaction, correct?

17 A. Not on day one.

18 Q. Did there come a time at which the
19 debtor directed Province to pursue a specific form
20 of transaction?

21 A. No. Province conducted its work,
22 consulted with parties and worked on transaction
23 structure after consultation.

24 Q. Okay. Do you know who CKDL credit is?

25 A. Yes.

1 Q. Who are they?

2 A. They should be the DIP lender entity for
3 Jason Lu and Komodo Bay.

4 Q. And who's Komodo?

5 A. They're investment fund based out of
6 Miami.

7 Q. And could we turn back to Tab 6, which
8 is Exhibit 2 and we'll go to Exhibit 1, which top
9 right corner says page 20?

10 A. You said Tab 6?

11 Q. Yes.

12 A. Okay. What page?

13 Q. It's Exhibit 1 and in the top right
14 corner it says page 20 of 21.

15 A. Okay.

16 Q. And can you read do you see where it
17 says company lenders?

18 A. I do.

19 Q. Can you read the first entity listed
20 under company lenders?

21 A. Komodo Bay.

22 Q. That's the Komodo that you were
23 referring to?

24 A. Correct.

25 Q. What does a company lender mean in the

1 context of this engagement letter?

2 MR. MANN: Objection to form.

3 THE WITNESS: That the company provided
4 representatives as potential financing for the
5 company.

6 BY MR. KISSNER:

7 Q. Did Province earn a fee in a financing
8 executed with a company lender?

9 MR. MANN: Objection to form.

10 THE WITNESS: No.

11 BY MR. KISSNER:

12 Q. And by the way if I refer to -- if we
13 refer to co strike that if I refer to CKDL or the
14 DIP lender today you'll understand that I'm talking
15 about CKDL credit?

16 A. The DIP lender.

17 Q. The vehicle of Komodo?

18 A. Yes.

19 Q. Excellent.

20 Let's go to Tab 40 which I'll ask be
21 marked as Exhibit 5.

22 (Exhibit 5 marked.)

23 BY MR. KISSNER:

24 Q. And if you could turn to the third page.

25 A. (Indicating.)

1 Q. Do you know what this document is?

2 A. This the bid procedures motion.

3 Q. Is this a draft?

4 A. It is stated as draft on the upper
5 right.

6 Q. So could you describe in your own words
7 what this is?

8 A. This looks like it's of a motion, bid
9 procedures for a plan sponsor.

10 Q. Now, we were talking about CKDL the DIP
11 lender before, right?

12 A. Uh-huh. Yes.

13 Q. Were they ever proposed to be the
14 stalking horse?

15 A. No.

16 Q. No.

17 A. Not to my knowledge.

18 Q. Fair. Could you turn to page 4 of this
19 exhibit. Apologies for doing this.

20 So I don't know why these aren't Bate
21 stamped. I'm really sorry. So if you could go
22 to -- there's Exhibit 1 to this document if you
23 could just flip -- I'll tell you when you get there.

24 MR. KISSNER: Off the record.

25 (A discussion is held off the record.)

1 MR. KISSNER: Back on the record.

2 BY MR. KISSNER:

3 Q. Could you turn to page 4 of this
4 document. Actually page 8. Could you tell me what
5 this appears to be?

6 A. It's just a draft document.

7 Q. A draft of what?

8 A. It's just a draft bidding procedures.

9 Q. Draft bidding procedures. Okay. If you
10 could flip, one, two pages over?

11 A. Which direction.

12 Q. Further.

13 A. Okay.

14 Q. And if you could look at there's a
15 paragraph 10. Could you read that to me the first
16 sentence.

17 A. The debtor has selected CKDL credit LLC
18 as the stalking horse bidder.

19 Q. Does this refresh your recollection as
20 to whether CKDL was originally the stalking horse.

21 A. No. It was a draft.

22 Q. Do you understand why this draft would
23 have said this?

24 A. We were working -- my assumption is we
25 were working through milestones.

1 Q. And by we, you mean whom?

2 A. Fox.

3 Q. And Fox refers to Fox Rothschild counsel
4 to the debtor?

5 A. Correct.

6 Q. And when you say you were working
7 through milestones, can you explain what you mean by
8 that?

9 A. Every document where you have a DIP
10 lender has certain milestones that are attached to
11 it in order to receive that financing that they want
12 in place and the debtor has the right to negotiate
13 those and discuss whether those milestones are
14 something that they view as acceptable or not in
15 order to receive financing.

16 Q. And who were you negotiating those
17 milestones with?

18 A. The DIP lender.

19 Q. And do you recall what the subject of
20 the dispute was over those milestones?

21 MR. MANN: Objection to form.

22 THE WITNESS: I don't recall.

23 BY MR. KISSNER:

24 Q. You don't recall.

25 A. (Shakes head in the negative.)

1 Q. Was that dispute ever resolved?

2 MR. MANN: Objection to form.

3 THE WITNESS: I don't recall. You'll

4 need to be specific about what that dispute was.

5 BY MR. KISSNER:

6 Q. Well, I wasn't there. Could you

7 describe what the dispute was?

8 A. I don't have any recollection.

9 Q. Okay. You just know it related to the

10 milestones?

11 A. I don't even -- I don't have a

12 recollection there was a dispute.

13 Q. But CKDL was not ultimately selected as

14 stalking horse, correct?

15 A. Rocket Coin was the stalking horse bid.

16 Q. Is Rocket Coin different from CKDL?

17 A. They are.

18 Q. So CKDL was not selected as the stalking

19 horse?

20 A. That's correct.

21 Q. Now, under this draft of the bid

22 procedures, was this -- were these bid procedures

23 for a particular type of transaction?

24 A. I have not reviewed this document ahead

25 of time.

1 Q. Do you have a recollection?

2 A. I don't recall.

3 Q. Do you know if these bid procedures were
4 for a 363 sale?

5 A. I would have to review the document. I
6 don't recall.

7 Q. Why don't you take a minute?

8 A. This draft?

9 Q. Correct?

10 A. Order establishing bidding procedure and
11 deadlines relating to the proposal for a plan of
12 reorganization for the debtor.

13 Q. Does that refresh your recollection as
14 to whether this draft bid procedures related to a
15 particular type of transaction?

16 A. Based on what I've just read here,
17 correct.

18 Q. Okay. And based off of what you've just
19 read what type of transaction do you understand this
20 draft of the bidding procedures to contemplate?

21 A. Plan reorganization for the debtor.

22 Q. And a plan of reorganization, that's not
23 a 363 sale, correct?

24 A. Correct.

25 Q. Can we go to Tab 11 which I'll ask that

1 we mark as Exhibit 6.

2 A. You said Tab 11?

3 Q. Tab 11, yes. Sorry.

4 (Exhibit 6 marked.)

5 BY MR. KISSNER:

6 Q. Do you recognize this document?

7 A. This is the bid procedures motion. I

8 think.

9 Q. Can could you describe briefly what this
10 document is beyond a bid procedures motion?

11 A. I can read you exactly what it is. This
12 is debtor's motion for entry of an order approving
13 auction and bidding procedures for potential plan
14 sponsors or the purchase of substantially all the of
15 the debtor's assets. Approving form notice to be
16 provided to interested parties and scheduling a
17 hearing to consider approval of the highest and best
18 transaction. Cure objectives and confirmation of
19 the proposed toggle plan.

20 Q. And could you describe in your own words
21 what you understand all that to mean?

22 A.

23 MR. MANN: Objection to form.

24 THE WITNESS: This motion will basically
25 simply determine rights and remedies of all parties

1 and the way the debtor would like the process to
2 proceed.

3 BY MR. KISSNER:

4 Q. And what process is that?

5 A. Approve the auction and bidding
6 procedure for potential plan sponsors or the
7 purchase of substantially all of the debtor's
8 assets.

9 Q. So these bid procedures contemplated
10 either a 363 sale or a plan sponsorship transaction;
11 is that fair?

12 MR. MANN: Objection to form.

13 THE WITNESS: That's fair.

14 BY MR. KISSNER:

15 Q. But the prior draft that we just
16 reviewed only pertained to a plan sponsorship
17 transaction?

18 MR. MANN: Objection to form.

19 THE WITNESS: I did not review the
20 document but in form, in title, that's what it said.

21 BY MR. KISSNER:

22 Q. Okay. Do you have a recollection as to
23 why that changed?

24 A. My recollection is that the DIP lender
25 worked with us on that.

1 Q. Did you talk to Enigma at all about the
2 decision to include a 363 sale in these bid
3 procedures?

4 A. I did not.

5 Q. When I say Enigma you understand me to
6 refer to my client Enigma Securities Limited?

7 A. I personally did not.

8 Q. Are you aware of anybody else at
9 Province that might have?

10 A. I don't recall.

11 Q. To your knowledge, did Enigma direct
12 Province or the debtor to revise the bid procedures
13 to include a 363 sale?

14 MR. MANN: Objection to form.

15 THE WITNESS: I have no knowledge of
16 that topic.

17 BY MR. KISSNER:

18 Q. To your knowledge, did Enigma direct the
19 debtor to pursue a 363 sale?

20 A. I have no knowledge on that topic.

21 Q. Did Province -- strike that.

22 Did you ever talk to anybody else at
23 Province about the decision to pursue a 363 sale
24 versus a plan sponsorship transaction?

25 MR. MANN: Objection to form.

1 THE WITNESS: Our team speaks about
2 different topics daily.

3 BY MR. KISSNER:

4 Q. Did you personally have a preference
5 between the two for this debtor?

6 MR. MANN: Objection to form.

7 THE WITNESS: My preference is the
8 maximized value for all creditors.

9 BY MR. KISSNER:

10 Q. Did you have a view as to which
11 transaction would maximize value for all creditors?

12 MR. MANN: Objection to form.

13 THE WITNESS: I think they both at that
14 time potentially both could be the maximizing value.

15 BY MR. KISSNER:

16 Q. And at that time you're referring to
17 what period of time?

18 A. Well, when we were strategizing on the
19 appropriate path for the company.

20 Q. And when was that approximately?

21 A. Over a multi month period.

22 Q. How about this. Do you recall when
23 these bid procedures were filed?

24 A. I do not.

25 Q. Do you want to look at page 1 of

1 Exhibit 6 which is right in front of you and look up
2 at the very top, the text at the top of the page?

3 A. Entered 4/723.

4 Q. Does that refresh your recollection as
5 to when the bid procedures were filed?

6 A. It does.

7 Q. So at the time that the bid procedures
8 were filed which appears to be April 7th you still
9 thought '-- Strike that.

10 At the time of April 7th, you did not
11 yet have a view as to whether a 363 sale or a plan
12 sponsorship transaction would be better.

13 MR. MANN: Objection form.

14 THE WITNESS: Correct?

15 BY MR. MANN:

16 Q. Do you know if Province's fees would
17 have differed between a 363 sale or a planned
18 sponsorship?

19 MR. MANN: Objection form.

20 THE WITNESS: Not materially.

21 BY MR. MANN:

22 Q. Not materially. Well could we turn to
23 back to Tab 8, which was Exhibit 4.

24 A. Is this right? (Indicating). Okay.

25 Q. Could you go to page 3 paragraph 1.

1 A. Okay.

2 Q. If you go down to line 20 could you read
3 to yourself the passage beginning with "provided"
4 and ending with the word "above"?

5 A. Provided however, should --

6 Q. You can read it to yourself.

7 A. Okay.

8 Q. Do you understand this passage to mean
9 that if exit financing was provided by a Province
10 lender Province's fee would have been one and
11 one-half percent of such exit financing?

12 A. Uh-huh.

13 MR. MANN: Objection to form.

14 BY MR. MANN:

15 Q. And do you understand this passage to
16 mean that if exit financing was provided by any
17 party other than a Province lender, a fee of three
18 percent of such exit financing would have been
19 earned?

20 MR. MANN: Objection to form.

21 THE WITNESS: Understood.

22 BY MR. MANN:

23 Q. Would it be fair to say that a plan
24 sponsorship transaction would involve exit
25 financing?

1 A. Sometimes.

2 Q. When wouldn't it?

3 A. Not every company is the same not
4 everyone needs the same type of exit financing
5 generalizations I won't generalize.

6 Q. Okay. Fair enough. Could you turn to
7 the next page. Paragraph 2. Can you read just
8 paragraph 2 again to yourself and let me know when
9 you're done?

10 A. I am finished.

11 Q. Do you understand this to mean that in
12 the event of a 363 sale Province would earn a three
13 percent fee regardless of the identity of the buyer?

14 A. I do.

15 Q. So with that in mind I guess I'll ask
16 again. Did you have any preference between pursuing
17 a 363 sale or a plan sponsorship transaction?

18 MR. MANN: Objection to form.

19 THE WITNESS: No.

20 BY MR. MANN:

21 Q. Would you agree that Province was
22 potentially eligible to earn more in a plan
23 sponsorship transaction than a 363 sale?

24 MR. MANN: Objection to form.

25 THE WITNESS: Can you rephrase?

1 BY MR. MANN:

2 Q. Well, sure. So in a plan sponsorship
3 transaction that might involve exit financing
4 Province's ability to earn a fee was in part based
5 off of the identity of the party providing exit
6 financing, fair?

7 A. Potentially.

8 Q. And in the case of the 363 sale,
9 Province's ability to earn a fee, it didn't depend
10 on the identity of the buyer, fair?

11 A. That is accurate.

12 Q. Do you think that that had an impact on
13 Province's decision making?

14 A. No.

15 Q. Did it have an impact on your decision
16 making?

17 A. No.

18 Q. Can you tell me what a credit bid is?

19 MR. MANN: Objection to form.

20 BY MR. MANN:

21 Q. Do you know what a credit bid is?

22 A. I do.

23 Q. Could you explain what it means?

24 A. It's when a lender has secured
25 collateral, in the typical case, where they're able

1 to use their debt securities to bid for a company
2 using their debt as first form of consideration.

3 Q. So in laymen's terms, it's when you bid
4 your debt in return for the collateral that secures
5 that debt?

6 A. That's correct.

7 Q. Was Province's ability to earn a fee
8 contingent upon -- strike that.

9 Could Province earn a fee in connection
10 with a bid that was a credit bid?

11 A. Paragraph 2, or otherwise not
12 constituting any proceeds that are credit bid by any
13 secured lender of the debtor on any liquidated
14 claim.

15 Q. What do you understand that to mean?

16 A. We would not.

17 Q. You would not earn a restructuring fee
18 on a bid that took the form of a credit bid?

19 MR. MANN: Objection to form.

20 THE WITNESS: Correct.

21 BY MR. MANN:

22 Q. Did that impact Province's decision
23 making in this case?

24 A. No.

25 Q. Did it impact your decision making in

1 this case?

2 A. No.

3 MR. MANN: Objection to form.

4 BY MR. MANN:

5 Q. And could we go off the record for a
6 second?

7 (A discussion is held off the record.)

8 MR. KISSNER: Back on the record.

9 BY MR. MANN:

10 Q. Now, before we were talking a little bit
11 about the difference between a 363 sale and a
12 planned sponsorship transaction. Do you recall
13 that?

14 A. I do recall.

15 Q. Can a plan sponsor credit bid?

16 A. Potentially.

17 Q. How would that work?

18 A. Plan sponsor you know if the company's
19 capitalized correctly on the back end, then a credit
20 bid is possible to become the plan sponsor.

21 Q. So a debt for equity swap, more or less?

22 A. Could be.

23 Q. As you understood it -- strike that.

24 Do you know if Province would have
25 earned a fee on a debt for equity swap?

1 MR. MANN: Objection to form.

2 THE WITNESS: I do not.

3 BY MR. MANN:

4 Q. Well, why don't we turn back to page 3
5 paragraph 1. If you could read the first sentence
6 to yourself from line 17 to line 20.

7 A. We would not.

8 Q. You would not earn a fee on a --

9 A. Excluding any amounts loaned by the
10 company lender. I assume that's your assumption for
11 a credit bid, but it is unclear, the language.

12 Q. So would it be fair to say then that the
13 terms of your engagement incentivized Province to
14 find new money for the company as opposed to a swap
15 of existing debt?

16 A. No.

17 MR. MANN: Objection to form.

18 BY MR. MANN:

19 Q. No. But you just said that you wouldn't
20 have earned a fee in a scenario where there was a
21 debt for equity swap correct?

22 MR. MANN: Objection to form.

23 THE WITNESS: Province does not make
24 decisions for company's based on fees.

25 BY MR. MANN:

1 Q. Would you agree that Province -- strike
2 that.

3 You testified earlier that while working
4 at Province you've been engaged by debtors and
5 borrowers in the past for transactions?

6 MR. MANN: Objection to form.

7 THE WITNESS: I have not been engaged by
8 debtors but I've been engaged by borrowers.

9 BY MR. MANN:

10 Q. And what would the -- in your words what
11 would be the difference between a debtor and a
12 borrower?

13 MR. MANN: Objection to form.

14 THE WITNESS: Debtor is the company a
15 borrower is typically a lender to the company.

16 BY MR. MANN:

17 Q. I think we might have some confusion on
18 that.

19 A. Okay.

20 Q. You've?

21 A. They can be considered the same thing
22 it's terminology. I understand your point.

23 Q. In those prior engagements, did were
24 Province's fees memorialized in an engagement
25 letter?

1 MR. MANN: Objection to form.

2 THE WITNESS: All Province fees are
3 memorialized in engagement letters.

4 BY MR. MANN:

5 Q. Did any of those engagements to your
6 recollection -- strike that. Do you recall what the
7 fee arrangements were for those prior engagements?

8 A. I don't.

9 Q. Do you recall if any of your prior
10 engagements have involved a contingency fee?

11 A. I have worked on prior engagements with
12 contingency fees.

13 Q. Do you have an understanding as to why a
14 client might include a contingency fee -- strike
15 that.

16 Do you have an understanding as to why a
17 client might agree to pay a contingency fee to a
18 financial advisor or investment banker?

19 MR. MANN: Objection to form.

20 THE WITNESS: To be equally incentivized
21 to share in success.

22 BY MR. MANN:

23 Q. A contingency fee as you understand it
24 is at least in part intended to incentivize the
25 advisor?

1 MR. MANN: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. MANN:

4 Q. Would you agree that the restructuring
5 fee above in Province's engagement letter with Coin
6 Cloud is a contingency fee?

7 A. Yes.

8 Q. Do you think its purpose was to
9 incentivize Province to do something?

10 MR. MANN: Objection to form.

11 THE WITNESS: No.

12 BY MR. MANN:

13 Q. What do you understand its purpose to be
14 if not to incentivize Province?

15 A. It's the standard fee on the backend of
16 a reorganization, from my perspective. It's
17 incentivizing us to have the company exit from
18 bankruptcy in whatever form that may take, whether
19 it be an asset sale or a plan of reorganization. It
20 incentivizes for the best outcome we can have as
21 possible.

22 Q. Okay. I think we can break now and go
23 off the record because that's all I have for now
24 before we get into other topics?

25 A. That's fine.

1 (A lunch recess is taken.)

2 MR. KISSNER: Mason, go ahead. Your
3 show.

4 EXAMINATION

5 BY MR. HIGGINS:

6 Q. Sir, hello. Can you see me and hear me
7 okay.

8 A. I do.

9 Q. Excellent so my name is Mason Higgins.
10 I'm an attorney for Av Tech Capital or better known
11 as AVT, Nevada LP.

12 So the same notes apply, my questioning
13 is for yours and I will note that I talk quite fast
14 sometimes. If you lose me at all, say hold up a
15 second what did you say and I'll ask it again. All
16 right.

17 A. Sounds great.

18 Q. Sounds good.

19 Let's start off with talking about how
20 the debtor has characterized AVT. So I want to
21 refer you to what's marked as Tab 11 in your binder
22 there. Did you find that?

23 A. Yeah.

24 Q. What is that document. I'm sorry. I
25 cut you off.

1 A. Make sure we're on the right one.

2 Motion for entry of an order approving auction and
3 bidding procedures.

4 Q. That should be correct. Yeah. Can we
5 agree the document is filed as Document 392 and was
6 filed on April 27, 2023?

7 A. 4/7/23, yes.

8 Q. Perfect.

9 A. Is that the right document? I think
10 we're on the same page.

11 Q. All right. If we scroll down to page 7
12 of that document using the upper right-hand corner
13 there's those blue page numbers up there?

14 A. Stalking horse? On the bottom of that
15 page?

16 Q. Page 7 using the blue page numbers.
17 It's page 6 of the document you'll see there should
18 be footnotes at the bottom of that page.

19 A. Okay. Got it. Thank you.

20 Q. Would you please read for me that first
21 paragraph of note footnote three?

22 A. Although AVT Nevada LP filed a UCC-1
23 financing statement against the leased DCMs, AVT
24 financing arrangement purports to be a true lease
25 with AVT filing the AVT UCC-1 solely as

1 precautionary measure. Accordingly, debtor assumes
2 that AVT is not a secured creditor for purpose of
3 this motion with a reservation of rights on issues
4 for context. See McAlary declaration.

5 Q. Can we agree that as of the date of that
6 document the debtor understood AVT to be a lessor in
7 this proceeding?

8 A. That is what the footnote says.

9 Q. And additionally that AVT held a true
10 lease over those AVT DCMs?

11 A. This is -- this is -- it's -- but this
12 is all in a draft form so that's what it says, it
13 says quote "true lease."

14 Q. Okay. And can we also agree that as of
15 the date of this document the debtor did not -- I'm
16 Sorry, Strike that -- was not treating AVT as a
17 secured creditor?

18 MR. KISSNER: Objection to form.

19 THE WITNESS: That's -- that's not
20 correct. All this says is that you filed a UCC-1
21 and a proof of claim as a secured creditor. This
22 says that you did that as a precautionary measure.
23 It does not reference whether they were considering
24 you in this paragraph whether you were a true lease
25 or a secured creditor. It just says you had a

1 precautionary measure, did that.

2 BY MR. HIGGINS:

3 Q. To refer you back to that same footnote
4 there, are we in dispute that that footnote provides
5 that AVT is not a secured creditor for this motions
6 purposes?

7 A. This says with a reservation of rights.

8 Q. Okay. So then we're --

9 A. With a reservation of rights.

10 Q. Okay. So we are otherwise agreeing
11 noting of course that they reserve rights on the
12 issue?

13 MR. KISSNER: Objection to form.

14 BY MR. HIGGINS:

15 Q. Can I have a verbal answer please.

16 A. I didn't know there was a question you
17 made a statement.

18 Q. That was my question. So --

19 A. Can you rephrase then, sir.

20 Q. Of course. Thank you for asking me to.

21 So we're otherwise agreed that noting
22 the debtor's reservation of rights AVT was not being
23 treated as a secured creditor for this motions
24 purposes?

25 MR. KISSNER: Objection to form.

1 THE WITNESS: I don't think this note
2 says that.

3 BY MR. HIGGINS:

4 Q. Okay. Let's move on then. Turn to
5 Tab 27 in front of you in your binder. Sure.

6 MR. KISSNER: And this is Andrew
7 Kissner. While we're doing that it wasn't relevant
8 before but can we just stipulate for the record that
9 objections raised by one party are preserved for all
10 parties.

11 MR. MANN: Yeah, that sounds great.

12 MR. KISSNER: Is that all right,
13 Mr. Higgins?

14 MR. HIGGINS: That's all right. Thanks
15 for asking.

16 THE WITNESS: Tab 27 I am there sir.

17 BY MR. HIGGINS:

18 Q. What is this document?

19 A. Motion for order confirming auction
20 results approving the sale of certain of the
21 debtor's assets to Heller Capital and Genesis Coin
22 free and clear of liens, claims encumbrances and
23 other interests authorizing the assumption and
24 assignment of certain of the debtor's executory
25 contracts and unexpired leases related thereto and

1 granting related relief.

2 Q. Thank you and can we agree for the
3 record this is Document 714?

4 A. Yes, I see it on the top in blue.

5 Q. And it was filed on June 16, 2023?

6 A. June 16, 2023.

7 Q. And if I call this document the sale
8 motion, will you understand that reference?

9 A. Sure, I can agree with that.

10 Q. Were you involved in drafting or
11 preparing motion?

12 A. My involvement was providing a
13 declaration to the sale results.

14 Q. Okay. Were you otherwise involved in
15 reviewing drafts of this motion or otherwise in
16 preparing what we have before us?

17 A. I don't recall if I actually reviewed
18 this draft or just provided the declaration.

19 Q. Please turn to page 15 of that document
20 again using the markings in the upper right corner?

21 A. Sure. Is that Exhibit A Heller asset
22 purchase agreement.

23 Q. It is and can we agree that Heller
24 refers to Heller Capital Group LLC?

25 A. Yes, sir.

1 Q. All right. Please turn ahead three more
2 pages to what's marked as page 18 on that document?

3 A. 18 of 66. Okay.

4 Q. And do you see where it's marked
5 Section 1.9 of the Heller APA?

6 A. I do.

7 Q. And what's the title of Section 1.9 of
8 the Heller APA?

9 A. Purchase price adjustment for AVT Nevada
10 LP machines.

11 Q. Please read me that first sentence of
12 that section?

13 A. Debtor leases approximately 483 DCMs
14 from AVT, Nevada LP who has agreed in principal to
15 allow debtor to include the AVT DCMs as part of the
16 purchase assets.

17 Q. Can we agree, then, as of the date of
18 this document that the debtor understood AVT to be a
19 lessor regarding those AVT DCMs?

20 MR. MANN: Objection to form.

21 THE WITNESS: I am not going to speak to
22 the entire debtor professionals of what they
23 thought.

24 BY MR. HIGGINS:

25 Q. To your knowledge, who drafted this

1 document?

2 A. Fox Rothschild.

3 Q. Debtor's counsel, correct?

4 A. Correct. Mason one second. Just
5 getting some coffee, sorry, handed to me.

6 Continue Mason.

7 Q. No problem at all. And Fox Rothschild
8 is debtor's counsel; is that correct?

9 A. Correct.

10 Q. To your knowledge, was the debtor
11 furnished a copy of this motion and its exhibits
12 before it was filed?

13 A. Was the debtor?

14 Q. Furnished a copy of this motion and the
15 exhibits to it before it was filed?

16 A. And when you refer to the debtor as
17 definitionally as which parties? As Danny Ayala as
18 director of the board and Chris McAlary.

19 Q. I'm referring to Cash Cloud,
20 incorporated dba Coin Cloud or anybody authorized to
21 speak on its behalf?

22 A. Yes I'm sure have seen this document.

23 Q. Okay. So then to ask my question a
24 little bit differently we can agree this document
25 purports -- Strike that.

1 This document identifies that AVT leases
2 certain DCMs to the debtor?

3 MR. MANN: Objection to form.

4 THE WITNESS: This document talks about
5 AVT as a lease despite a proof of claim being filed
6 by AVT as a secured creditor.

7 BY MR. HIGGINS:

8 Q. All right. Are you aware of or privy to
9 any discussions between the debtor and its counsel
10 from around June 16, 2023, regarding AVT's status as
11 a lessor?

12 A. I was not involved in those
13 conversations.

14 Q. Did any exist?

15 A. I was not involved in those
16 conversations.

17 Q. Do you have any reason to believe that
18 AVT and Fox Rothschild would disagree at this time
19 regarding A V T's status in these proceedings?

20 A. I have no knowledge of that
21 conversation.

22 Q. Okay. Can you please read the following
23 sentence on that same Section 1.9 beginning with
24 prior to?

25 A. Just trying to find the -- where does it

1 follow?

2 MR. KISSNER: The second sentence.

3 THE WITNESS: Oh, thank you. Prior to
4 any hearing to approve the sale order, debtor shall
5 obtain written consent from AVT for the inclusion of
6 a AVT DCMs in the purchase assets.

7 BY MR. HIGGINS:

8 Q. Please keep going.

9 A. If debtor does not obtain such written
10 consent from AVT or if AVT otherwise revokes its
11 consent to have the AVT DCMs included in the
12 purchase assets prior to the hearing to approve the
13 sale order, the AVT DCMs shall not be included in
14 the purchase assets and the purchase price shall be
15 reduced pursuant it a pro rata allocation of
16 purchase price for AVT DCMs, which amounts shall
17 also be included on the allocation statement.

18 I am aware of that, yes.

19 Q. Thank you. And would you dispute that
20 this document, the motion including its exhibits
21 were amended on June 19, 2023, when what was filed
22 as Document 730 hit the record?

23 MR. KISSNER: Objection. Form.

24 THE WITNESS: Are you pointing me
25 something to look at so I can confirm that for you.

1 BY MR. HIGGINS:

2 Q. I'm not I'm asking you if you are aware
3 this document was amended on June 19, 2023?

4 A. I don't know off the top of my head if
5 this was the final document or there was an
6 amendment to it without seeing it.

7 Q. Okay. That makes sense.

8 Would you be surprised to learn that
9 when this document was amended, this Section 1.9 of
10 the Heller 1.9 of the Heller APA was not changed in
11 any way?

12 MR. MANN: Objection to form.

13 THE WITNESS: Surprised?

14 BY MR. HIGGINS:

15 Q. Would you be surprised to learn that,
16 yes?

17 MR. MANN: Objection to form.

18 THE WITNESS: I don't think I would have
19 surprise or lack of surprise. I think that in
20 amendments of documents sometimes paragraphs are
21 changed and negotiations happen in between and
22 sometimes they are not. So I can't I would not ever
23 characterize myself as surprised other than, you
24 know, in these occurrences things sometimes stay the
25 same, sometimes they change between drafts or

1 amendments.

2 BY MR. HIGGINS:

3 Q. Fair enough. Do you ever recall
4 discussing the contents of this section, Section 1.9
5 of the Heller APA?

6 A. I -- I don't recall the exact discussion
7 1.9 exactly.

8 Q. Do you recall any discussions regarding
9 Av Tech's -- pardon me strike that -- AVT's rights
10 to consent or withdraw consent in these proceedings?

11 A. I have originally we had a conversation
12 with the buyer. The buyer asked whether this was a
13 lease or a financing. I was -- I have been advised
14 that they filed a UCC-1 and a proof of claim as a
15 secured creditor and you can take and I have advised
16 them to take any measures that you think makes sense
17 from his standpoint and that was probably the last I
18 had a conversation on that with anybody.

19 Q. And when you say the buyer, are you
20 referring to Heller Capital or Genesis Coin?

21 A. Heller because Genesis Coin is not
22 relevant for this -- for this part of the asset
23 purchase.

24 Q. Okay to make sure I understand what you
25 just told me Heller Capital approached you asking

1 whether or not AVT was a lessor or a financier in
2 this matter?

3 MR. MANN: Objection to form.

4 BY MR. HIGGINS:

5 Q. Is that correct?

6 A. No. It was brought up in a conversation
7 about all parties and there was no approach by
8 Heller. That is my recollection.

9 Q. Do you recall when approximately that
10 discussion was had?

11 A. I do not recall.

12 Q. Do you recall if it was before or after
13 the auction on June 2nd, 2023?

14 A. I don't recall.

15 Q. Do you recall how AVT's DCMs
16 specifically were marketed leading up to the auction
17 on June 2nd, 2023?

18 A. We marketed all the collateral together.

19 Q. Am I correct then to assume that the
20 debtor did not differentiate between AVT's DCMs and
21 we'll say Enigma's DCMs in its marketing ahead of
22 the auction on June 2nd?

23 A. Only to the extent that the collateral
24 was different. The buyer did due diligence on each
25 type of assets within the collateral pool and we

1 classified things and looked at things whether they
2 were different models of Cole Kepro or what type of
3 machines they were is how the debtor was -- asked us
4 to approach them at the time.

5 Q. Understood. Thank you. These
6 discussions with Heller capital were these over the
7 phone or via e-mail how were these had?

8 A. In general or is there a specific
9 timeframe you're looking for? In general we spoke
10 on the phone.

11 Q. On the phone. Thank you. And I'll ask
12 you just one more time if you can recall any clarity
13 as to when that discussion with Heller Capital
14 regarding whether AVT was a lessor a financier
15 occurred before or after the auction do you have any
16 milestones to place that discussion around?

17 MR. KISSNER: Objection to form.

18 THE WITNESS: I have no recollection
19 there.

20 BY MR. HIGGINS:

21 Q. That's fair enough. Let's step back a
22 little bit and talk about the auction more
23 generally. Is it your understanding that Heller
24 Capital's bid entered at the auction was over each
25 of the DCMs including AVT's DCMs?

1 A. Will you rephrase for me, please?

2 Q. Certainly. Yeah. Is it your
3 understanding that when Heller Capital submitted its
4 bid at the auction on June 2nd that it was bidding
5 to purchase all of the debtor's leased or owned DCMs
6 to include AVT's DCMs?

7 MR. KISSNER: Objection to form.

8 THE WITNESS: Heller Capital was bidding
9 originally for 2200 in storage and 3500 that were in
10 the field.

11 BY MR. HIGGINS:

12 Q. And do those numbers to your
13 understanding include AVT's DCMs?

14 A. They do.

15 Q. Would you be surprised to learn that the
16 debtor first contacted AVT after the auction to ask
17 whether or not it would consent to including its
18 DCMs in the sale?

19 MR. KISSNER: Objection to form.

20 THE WITNESS: I don't know when the
21 debtor contacted AVT originally. I did not have
22 direct communications with AVT at any time in this
23 case.

24 BY MR. HIGGINS:

25 Q. Until now. Understood.

1 A. Until now.

2 Q. Do you have any reason to believe,
3 though, that the debtor contacted AVT before the
4 auction to ask whether it would consent to its
5 machines being included in the sale?

6 A. I have no reason to believe or not to
7 believe that happened prior to the auction as I did
8 not have direct contact with AVT.

9 Q. Fair enough. Do you believe that the
10 sale through Heller Capital would have closed
11 without the AVT DCMs being included in the sale?

12 MR. KISSNER: Objection to form.

13 THE WITNESS: I think that -- I think
14 that -- I don't know what Heller Capital's
15 intentions were in terms of the amount a minimum
16 amount of machines they were looking to buy. So
17 whether AVT would be included would affect that or
18 not we never had a conversation if there was a
19 minimum that they needed.

20 BY MR. HIGGINS:

21 Q. Did you ever discuss with Heller Capital
22 its intentions regarding AVTs machines in
23 particular?

24 MR. MANN: Objection to form.

25 THE WITNESS: Can you define intentions

1 please.

2 BY MR. HIGGINS:

3 Q. I'm asking you whether or not you can
4 offer any clarity as to whether Heller had any
5 intentions for AVTs machines specifically?

6 MR. KISSNER: Objection to form.

7 THE WITNESS: As I've previously stated,
8 the assets were marketed with 2200 machines that
9 were from the books and records of the company in
10 the warehouses, and 3500 in the field.

11 BY MR. HIGGINS:

12 Q. And as we agreed previously those
13 numbers do include AVTs DCMs; is that correct?

14 MR. MANN: Objection to form.

15 THE WITNESS: They do.

16 BY MR. HIGGINS:

17 Q. So is it fair to say then that Heller
18 Capital intended to purchase AVTs DCMs when it
19 placed its bid on June 2nd?

20 MR. KISSNER: Objection to form.

21 THE WITNESS: Again Heller Capital was
22 intent was to bid was to purchase 2200 machines in
23 warehouse and 3500 in the field. I have no
24 knowledge based on whether Heller Capital
25 differentiated between for differentiated between

1 machines.

2 BY MR. HIGGINS:

3 Q. All right. Besides the discussion you
4 had with Heller Capital regarding whether or not AVT
5 was a lessor, do you recall any other discussions
6 with Heller Capital where AVT was singled out or
7 evoked?

8 A. I do not.

9 Q. Okay we can turn now to the debtor's
10 surcharge motion and if I say surcharge motion do
11 you know what I'm referring to?

12 A. I do.

13 Q. And that's the document filed as
14 Document 926 filed on July 24th the motion to
15 surcharge?

16 A. Can you give me the tab again.

17 Q. I don't believe it's one of the tabs in
18 front of you. I could be wrong Mr. Kissner, but I
19 don't believe it is.

20 We'll avoid getting into the substance
21 of that document as I understand it's not before you
22 but I'm gonna ask you some questions about your
23 understanding of that document.

24 Would you be surprised to learn that --

25 MR. MANN: Can you hold on Mason?

1 MR. KISSNER: I might have a copy of it
2 with me.

3 MR. HIGGINS: Oh, thank you.

4 MR. MANN: And Mason when you're
5 questioning him about the surcharge, where is this
6 leading because he's only appearing here today to
7 focus on the sale.

8 MR. HIGGINS: I understand that I'm
9 speaking to talk to how AVT's characterized in that
10 motion I believe it's relevant to AVT's importance
11 to the sale itself.

12 MR. MANN: So it's more just the
13 contents of this document and not what went on the
14 surcharge analysis.

15 MR. HIGGINS: I'm sorry. It's very hard
16 to hear right now.

17 MR. MANN: So are you only questioning
18 him on the contents of the motion or actual facts of
19 what went along with the surcharge.

20 MR. HIGGINS: These questions are all
21 about the contents of that motion.

22 MR. MANN: Well, again, you're fine with
23 that. All right?

24 THE WITNESS: Maybe. You can object if
25 it doesn't make sense.

1 MR. KISSNER: And by the way this was
2 marked yesterday as Exhibit 36 to the James
3 declaration I don't know should we mark this as a
4 separate exhibit for today.

5 MR. MANN: I feel like for organizations
6 sake. Let's put it in as a new exhibit so it goes
7 chronologically of what was talked about in this
8 deposition.

9 MR. KISSNER: So by the way I think that
10 previously we were discussing Tab 27 which I the --
11 27 rather I believe the court reporter has marked
12 that as Exhibit 7.

13 So I think the surcharge motion would be
14 Exhibit 8 today.

15 (Exhibit 8 marked.)

16 THE WITNESS, Continue Mason I'm ready.

17 BY MR. HIGGINS:

18 Q. That was Exhibit 28 right Mr. Kissner?

19 MR. KISSNER: This is Exhibit 8.

20 MR. HIGGINS: Thank you Exhibit 8.

21 BY MR. HIGGINS:

22 Q. All right. Looking at Exhibit 8, I will
23 refer you to page -- it's marked as page 1 on the
24 document. It's the second page the first page after
25 the caption. I'll refer to that first paragraph

1 there?

2 A. Are you talking about preliminary
3 statement page 1.

4 Q. Above that that first paragraph there.
5 Do you see where about halfway through the first
6 paragraph the document lists Genesis Global Holdco,
7 LLC, Enigma Securities Limited and AVT Nevada, LP
8 and described those entities as the secured
9 creditors?

10 A. Correct.

11 Q. Why did the debtor's position change
12 with regards to whether or not AVT was a secured
13 creditor?

14 MR. MANN: Objection to form.

15 MR. KISSNER: Objection to form.

16 THE WITNESS: My understanding is -- my
17 understanding is when we marketed the assets which
18 included AVTs Enigma and Genesis where, you know,
19 they give you simple clarification that AVT was a
20 secured creditor to give.

21 So when I went out and marketed and we
22 spent the time, the attention maintaining,
23 marketing, repairing and all the expenses that are
24 associated with this from a period that started on
25 February 7th till the auction date on the second and

1 post that, that as the auction came about that AVT
2 was a secured creditor that filed a proof of claim
3 with the court and a UCC-1 thus to me as a seller of
4 the asset, they were always considered a secured
5 creditor. I am not going to tell you why the
6 motions -- I have no -- I have no thought on why the
7 motions are different.

8 BY MR. HIGGINS:

9 Q. Understood. As you sit there, does the
10 debtor now dispute that AVT is a lessor in this
11 proceeding?

12 MR. MANN: Objection to form.

13 THE WITNESS: I'm not in a position to
14 dispute or not dispute right now. The -- the sale
15 is closed. The sale has been approved and from that
16 basis is the -- AVT has received the benefit of --
17 of proceeds.

18 BY MR. HIGGINS:

19 Q. I can reask my question for you. So you
20 are sitting here on behalf of the debtor Cash Cloud
21 incorporated, are you not?

22 A. I am.

23 Q. Okay. So then as you sit there on
24 behalf of the debtor, do you now dispute that
25 contrary to cash clouds original position AVT is a

1 lessor in these proceedings?

2 MR. MANN: Objection to form.

3 THE WITNESS: I am -- I am saying

4 clearly that AVT filed a UCC-1 and a proof of claim

5 as a secured creditor, which from all bases to my

6 knowledge makes AVT a secured creditor.

7 BY MR. HIGGINS:

8 Q. And in stating that, is that a stance

9 you are taking that AVT is not a lessor?

10 MR. MANN: Objection to form.

11 THE WITNESS: I am not taking a stance I

12 am telling you that AVT filed a proof of claim with

13 a UCC-1 which makes them a secured creditor.

14 BY MR. HIGGINS:

15 Q. So are you not disputing, then, you're

16 not denying then that AVT is a lessor?

17 MR. MANN: Objection to form.

18 MR. KISSNER: Objection to form.

19 THE WITNESS: I am going to repeat that

20 AVT filed a UCC-1 as a secured creditor thus -- thus

21 the assets were sold as a secured creditor.

22 BY MR. HIGGINS:

23 Q. Understood. We can move on now. I have

24 one more topic for you today and that's the debtor's

25 warehouses. So am I correct that there are DCMs

1 stored in three separate warehouses employed by Cash
2 Cloud?

3 A. No.

4 Q. Okay. I'll ask you to clarify for me.

5 So how many warehouses did the debtor employ in
6 these proceedings?

7 A. I will estimate and not opine on this as
8 factual. My recollection is there's someplace
9 between 35 and 50 warehouses that have machines in
10 them across the country. And I would refer you
11 to -- I would refer you to probably Chris McAlary's
12 declaration originally but I'm not quite sure, but
13 there is absolutely more than three.

14 Q. Okay. And I may have asked that in an
15 unclear way and I do apologize for that.

16 Can we agree though that the debtor has
17 employed three companies to store its DCMs in
18 warehouses around the country?

19 A. I'm not -- that was in the preview of
20 Tanner James.

21 Q. And you have -- and you have no
22 knowledge of that declaration --

23 A. I am not -- I did not read Tanner
24 James's declaration and I am -- he has been
25 responsible for the logistics of this company so I

1 will not speak on things that I am not -- factual
2 think or know are a hundred percent accurate.

3 Q. So you don't have any -- strike that.

4 So you're not prepared to talk about the debtor's
5 operations with regards to storing the DCMs it
6 operates or warehouses?

7 A. I can tell you that as I said earlier,
8 the debtor basically has a logistics of about 35 to
9 50 places to store assets. My -- I'm here to speak
10 about the sale process and the auction as I said,
11 you can -- as you had yesterday, you had Tanner
12 James you could have spoken about the operations and
13 the logistics. So I would refer you to Tanner James
14 if you would like to talk about the logistics which
15 is part of the surcharge motion.

16 Q. Fair. And I do appreciate that clarity
17 of what you're going to talk about today with that
18 being said I have no further questions for you thank
19 you for your time?

20 A. Mason nice to meet you thank you for
21 yours.

22 BY MR. KISSNER:

23 Q. Okay I'm going to ask you some more
24 questions if that's okay Mr. Moses.

25 Before you were talking with Mr. Higgins

1 about what has been marked as Exhibit 7, Tab 27 in
2 your binder you have it in front of you which was
3 the sale motion?

4 A. 27?

5 Q. Yeah you're there. You got it.

6 A. This one (indicating).

7 Q. Yep.

8 A. Document 714?

9 Q. Yes, sir. Do you recall Mr. Higgins
10 asked you if Fox Rothschild drafted the APA that was
11 attached as an exhibit to this?

12 A. Yeah. Yes the debtor's counsel and --

13 Q. Drafted the APA document that was your
14 testimony before.

15 A. Yeah.

16 Q. Can you turn to going by the page
17 numbers in the upper right-hand corner 51 of 66.

18 A. We're there.

19 Q. Section 9.09 and can you go town to
20 subparagraph B and could you read that to yourself
21 and let me know when you're done?

22 A. You said 9.09 sir.

23 Q. Yep and then subparagraph B.

24 A. Okay.

25 Q. What do you understand that sentence to

1 mean?

2 A. Nothing.

3 Q. Do you understand that to mean that this
4 agreement was drafted by both parties to the
5 agreement?

6 A. I don't know the definition of parties.

7 Q. Fair enough if I were to tell you the
8 parties for this agreement were Heller Capital and
9 Coin Cloud would that sound familiar to you?

10 A. That would.

11 MR. MANN: Objection to form.

12 THE WITNESS: That would seem logical.

13 BY MR. KISSNER:

14 Q. So would you understand this sentence to
15 suggest that this agreement was drafted by Heller
16 Capital and the debtor?

17 MR. MANN: Objection to form.

18 THE WITNESS: This agreement was I would
19 assume drafted by all parties involved.

20 BY MR. KISSNER:

21 Q. Okay. So does at that refresh your
22 recollection as to who drafted this APA?

23 A. As I said is I did not do the drafting
24 of the APA.

25 Q. Correct.

1 A. That my assumption is parties involved
2 drafted it, but I have no knowledge of who drafted
3 it together.

4 Q. Okay. But it would be fair to say then
5 that this wasn't drafted by Fox Rothschild alone,
6 but perhaps in concert with advisor to Heller, fair?

7 A. There is typical -- there is typical
8 drafting between parties, correct.

9 Q. So your understanding would be this was
10 drafted by both parties?

11 A. My understanding is that the debtor
12 would take -- would be the initial drafter and then
13 work with the purchaser.

14 Q. Okay. Great. That was all I had on
15 that.

16 Let's go back to -- we were starting to
17 talk this morning before lunch about the sales and
18 marketing process and then this afternoon we're
19 going to talk about a little more about that process
20 and then the auction.

21 A. Sure.

22 Q. Before we do, before we had taken a
23 break for about an hour or so, you said that you had
24 a call during that break?

25 A. I did.

1 Q. And that was on a different matter not
2 on Cash Cloud?

3 A. That's correct.

4 Q. Other than that call, did you have any
5 other conversations during your break?

6 A. That was my break. You're not privy to
7 my break.

8 Q. Did you have any conversations about the
9 substance of your testimony today during the break?

10 A. I spoke to many different parties during
11 the break.

12 Q. Right. But did you have any
13 conversations regarding the substance of your
14 testimony today during your break?

15 A. I spoke to Paul Huygens and mentioned
16 that I was testifying.

17 Q. Did you talk about the content of your
18 testimony today?

19 A. Only that it was on pre-sale process.

20 Q. Okay. All right. We might come back to
21 that later.

22 A. Okay.

23 Q. All right. So as part of your role with
24 Province in this engagement, you assisted with the
25 sales and marketing process for Coin Cloud assets

1 fair to say?

2 A. Absolutely.

3 Q. Would you say you assisted or you

4 managed the process?

5 A. I managed the process.

6 Q. Did you speak with potential purchasers

7 as part of managing that process?

8 A. I did.

9 Q. Do you recall about how many you spoke

10 to?

11 A. Sure. We sent a teaser out to about 48

12 different parties.

13 Q. Okay.

14 A. We signed if I recall correctly

15 initially 15 at least 15 N D As that were just

16 specific to the sale process. Sometimes some of

17 those people would overlap who looked at the

18 financing of the DIP. Who also might have been

19 interested in the assets. So there might have been

20 an additional parties that we spoke to above the 15

21 that were under NDA because they were already

22 involved.

23 Q. Would you say that those parties as you

24 phrased it above the 15 under NDA would that be

25 captured in the 48 parties though?

1 A. They would.

2 Q. And we're not going to go through 15
3 different conversations, so don't worry about that?

4 A. I'm not.

5 Q. But when speaking with potential
6 purchasers what was generally the content of those
7 conversations what were those conversations like?

8 A. Every conversation is different.

9 Q. Sure.

10 A. We go -- and it depends. With most
11 purchasers of assets, you have multiple
12 conversations. So it's an iterative process.
13 Let's lay this out so the first thing you have to
14 always do with a purchasers once they get the teaser
15 is they have to express interest. The first step of
16 that process is then let's get them to sign a NDA so
17 you can have more open conversations besides
18 describing what you're actually selling. Once you
19 get that NDA you usually have a quick -- then you
20 have a conversation.

21 Either myself or management or other
22 people who are experts would usually be on the phone
23 with me. Sometimes we start myself. Sometimes it's
24 myself and a couple of my other colleagues where we
25 start to answer questions for them about the assets,

1 the transactions, what we're selling, access to
2 diligence, VDRs how many how competitive the process
3 is, you know, what are there -- how are you looking
4 to buy is it 363? Is it plan sponsor?

5 So everything from structure to business
6 to anything else that would be on the buyer's mind
7 would be in those initial conversations.

8 Q. Okay. And so you had at least 15
9 initial conversations fair to say?

10 A. Estimated.

11 Q. And probably many multiples of that in
12 total conversations, right?

13 A. That's correct.

14 Q. Going back to your earlier answer when
15 you were sort of describing the blocking attack on
16 those calls, you said one of the things that you
17 might discuss is 363 sale, plan sponsorship or other
18 type of transaction; is that right?

19 A. That is correct.

20 Q. Do you recall ever telling any of the
21 purchasers -- Strike that.

22 Do you recall telling any of the
23 potentially interested parties that you spoke to
24 whether the debtor had a preferred transaction
25 structure?

1 A. We've never talked about a preferred
2 transaction structure we referred them to the DIP
3 documents which had milestones that effectively
4 described different processes for transactions but
5 we have never -- we don't Province doesn't have a
6 preference. We will never have a preference on
7 transaction structure. What we have a preference on
8 is for all the estate and all creditors is getting
9 the highest and best value for all creditors.

10 Hard stop that's it. So we have no
11 preference on fees we have no judgment based on
12 process. We take our fiduciary's responsibilities
13 seriously and that's how we approach every
14 conversation.

15 Q. Okay. You said a phrase in there
16 highest and best. What does that mean?

17 A. We want try to get the highest value we
18 can for all creditors.

19 Q. Does highest and best necessarily mean
20 highest purchase price?

21 MR. MANN: Object as to form.

22 THE WITNESS: I think you're
23 characterizing a complicated question with a
24 simple -- with a simple statement and I don't think
25 that's correct. When you sell an asset, there are

1 multiple things, highest price could be one. Form
2 of consideration could be another. Whether maybe
3 it's going to be do they have financing. Do we
4 think they can close? Do they have diligence? So
5 when you think about the mosaic of highest price,
6 highest price includes all those things in order to
7 have a successful transaction. It's not just a
8 quantitative measure it can't be.

9 BY MR. KISSNER:

10 Q. So you would say it's a qualitative
11 assessment?

12 A. No it's a quantitative like I said it's
13 a mosaic. You're trying to get to the highest price
14 that will have the ability to close.

15 Q. Okay. Why don't we go to Tab 10 in your
16 binder I don't think we've marked this one yet so I
17 think this will be Exhibit 9?

18 A. That's the one pager?

19 Q. Yeah. Do you recognize this document?

20 A. I do.

21 Q. Can you tell me what it is?

22 A. Bid deadline of April 12th.

23 Q. Would it be fair to say then that this
24 was prepared on or about oh, Sorry. Strike that.

25 Do you know when this document was

1 filed?

2 A. I do not.

3 Q. Can you --

4 A. On than what it reads up top March 30th.

5 Q. So would you agree that this document
6 was likely prepared on or about March 30th?

7 A. I don't know when it was prepared.

8 Q. Okay. Could you describe to me in your
9 own words what you understand this notice of bid
10 deadline to be?

11 A. This is a very simple notice that goes
12 out to all parties in a public forum that basically
13 identifies the timeline during a sale process or a
14 plan sponsor process in this particular case where
15 we were filing a toggle plan of April 12th as a date
16 that we would like initially term sheets to be
17 submitted.

18 Q. In your prior experience advising
19 clients in connection with 363 sales which we
20 discussed before, is it typical for a bid deadline
21 notice like this could be filed publicly?

22 A. Yes.

23 Q. And you said before this was prepared
24 and filed apparently on or about March 30th, 2023?

25 A. Uh-huh.

1 Q. Do you recall if around March 30th,
2 2023, the debtor was in communications with
3 potentially bidders interested in serving a stalking
4 horse.

5 A. Not by March 30th. We were in
6 communications with eventual stalking horse bid, but
7 they did not file a term sheet until April 7th.

8 Q. Were you talking with other parties
9 potentially interested in serving as a stalking
10 horse?

11 A. We were talking to all parties about
12 being the stalking horse. Everyone we spoke to we
13 have told them they have an equal opportunity since
14 the teaser went out on March 1st if you have the --
15 if you have the right bid and the right structure to
16 be the initial stalking horse everyone has an equal
17 opportunity.

18 Q. How advanced were those discussions if
19 you recall?

20 MR. MANN: Objection to form.

21 THE WITNESS: Can you elaborate on the
22 question?

23 BY MR. KISSNER:

24 Q. Sure. You said that you had discussions
25 with all parties since March 1st about the potential

1 to serve as a stalking horse, correct?

2 A. Uh-huh.

3 Q. And just curious if you recall how
4 advanced those discussions were?

5 MR. MANN: Objection to form.

6 BY MR. KISSNER:

7 Q. How far along were you in those
8 discussions I'll rephrase?

9 A. Every party was different is at a
10 different point in time.

11 Q. By March 30th had you selected a
12 stalking horse?

13 A. We can't select a stalking horse without
14 a term sheet.

15 Q. And by March 30th had you received a
16 term sheet to serve as a stalking horse from any
17 party?

18 A. My recollection was April 7th was the
19 first term sheet but I'm happy to go back for you
20 through the records to figure out if it came in
21 earlier, but my recollection is April 7th.

22 Q. Okay that's fine. We'll probably get
23 there today, so no need.

24 Now, this morning you were telling me a
25 little bit about what a stalking horse is do you

1 remember that?

2 A. I do.

3 Q. And would it be a fair summary of your
4 testimony that a stalking horse acts as the initial
5 bidder in the process?

6 MR. MANN: Objection to form.

7 THE WITNESS: Yeah. The stalking horse
8 is the initial bidder that typically sets a floor to
9 try to create a competitive environment to get a
10 higher bid in the process.

11 BY MR. KISSNER:

12 Q. In your experience does having a
13 stalking horse send a signal to the market?

14 MR. MANN: Objection to form.

15 THE WITNESS: Yes.

16 BY MR. KISSNER:

17 Q. What kind of a signal does it send?

18 A. I think it sends a signal that this is
19 going to be a competitive process.

20 Q. Now, does this notice that was filed
21 with the court does this mention a proposed stalking
22 horse bidder for the debtor's assets?

23 A. No.

24 Q. Do you think that sent a signal to the
25 market?

1 A. No.

2 Q. You don't think that somebody reading
3 this would strike that.

4

5 A. This is a standard bid deadline. It
6 tells -- it basically incentivizes buyers to have
7 their term sheets in sooner. Thus creating a
8 competitive environment in order to try to realize
9 higher values. Very standard in the business.
10 Happens every 363 process.

11 Q. Would you say that it's standard for bid
12 deadline notices such as this to announce a stalking
13 horse?

14 A. No. I don't think it's standard.

15 Q. Okay. We're going to turn to Tab 45 in
16 your binder and I'm going to ask that that be marked
17 as Exhibit 10?

18 (Exhibit * marked.).

19 MR. KISSNER: And by the way is
20 everybody able to hear us.

21 (Interruption in proceedings)

22 BY MR. KISSNER:

23 Q. All right Mr. Moses do you recognize
24 exhibit continue?

25 A. I do not.

1 Q. Could you review it.

2 A. Okay.

3 Q. Can you tell me what it appears to be?

4 A. It says term sheet for Cash Cloud plan
5 of re-org.

6 Q. What does that mean to you?

7 A. Honestly, it doesn't mean a lot. This
8 looks like it is a general early stage process term
9 sheet of trying to figure out structure of a plan.

10 Q. A plan for reorganization?

11 A. That's what it says.

12 Q. Go ahead.

13 A. No, that's it that's what it says.

14 Q. Did you draft this document?

15 A. I did not.

16 Q. Do you know who did?

17 A. I do not.

18 Q. Do you have a guess?

19 MR. MANN: Objection to form.

20 THE WITNESS: I don't guess.

21 BY MR. KISSNER:

22 Q. But if you had to?

23 MR. MANN: Objection to form.

24 THE WITNESS: I don't guess.

25 BY MR. KISSNER:

1 Q. Do you know about when this -- strike
2 that.

3 Do you know on or about which date this
4 document was created?

5 A. I only know exactly what you just said.

6 Q. Okay. Well, if we turn to page 1,
7 which is the cover e-mail. And if you look up at
8 the top at the sent line, there's a date there.
9 Could you read that?

10 A. April 6th.

11 Q. Does that refresh your recollection as
12 to when this document was created?

13 A. No.

14 Q. No? Okay. And before you said that you
15 didn't know who drafted this document?

16 A. I do not know -- I will not say who
17 authored this document because I do not know.

18 Q. Do you have any recollection if this was
19 approved by the DIP lender?

20 A. I don't have any recollection.

21 Q. Do you have any recollection if this was
22 approved by any potential bidder for the debtor's
23 assets?

24 A. I have no recollection.

25 Q. Okay. Do you have an understanding what

1 the purpose of this document was?

2 MR. MANN: Objection to form.

3 THE WITNESS: I have no knowledge base
4 of what the purpose was.

5 BY MR. KISSNER:

6 Q. Okay. Well before you said this appears
7 to be a term sheet for a plan of reorganization,
8 correct?

9 A. But it's a term sheet for plan -- but
10 it's a early, early draft, it looks like.

11 Q. That's fair.

12 A. It looks like work product.

13 Q. Would it be fair to characterize this as
14 a proposal?

15 MR. MANN: Objection to form.

16 THE WITNESS: No.

17 BY MR. KISSNER:

18 Q. How would you characterize it, then?

19 A. Early work product.

20 Q. Turning back to the first page of the
21 cover e-mail, can you tell me who this was sent by?

22 A. Paralegal for Fox Rothschild.

23 Q. Okay. And you don't have to read them
24 into the record, but can you look at the
25 individual's listed in the to field?

1 A. Sure.

2 Q. And let me know when you're done.

3 A. I am done.

4 Q. Can you tell me if you recognize any of
5 those names?

6 A. I do.

7 Q. Can you tell me for any that you do
8 recognize can you tell me who you understand them to
9 be?

10 A. I understand that these are lawyers for
11 the committee. It looks to me this is the
12 consultation party group.

13 Q. And who are the consultation parties?

14 A. Enigma, Genesis, the UCC and the DIP
15 lender, whether he's formally in it, the
16 consultation but the DIP lender is always a
17 consultation party.

18 Q. And UCC, you mean the committee,
19 correct?

20 A. I do.

21 Q. And where did you get that phrase
22 consultation parties from?

23 A. That's what that group is always
24 referred to me as.

25 Q. Do you have any understanding as to why

1 a paralegal from Fox Rothschild would be sending a
2 term sheet for a plan of reorganization to the
3 consultation parties?

4 MR. MANN: Objection to form.

5 THE WITNESS: I do not.

6 BY MR. KISSNER:

7 Q. And turning back to the term sheet
8 itself, do you see the top row of the term sheet
9 third column where it says proposed plan treatment?
10 Do you see that?

11 A. Uh-huh.

12 Q. Okay. Do you have an understanding as
13 to why it would say proposed plan treatment there?

14 MR. MANN: Objection to form.

15 THE WITNESS: As I've repeatedly have
16 said it looks like a working draft.

17 BY MR. KISSNER:

18 Q. Okay. I guess what I'm trying to get at
19 is you said before that this -- it would be unfair
20 to characterize this as a proposal, right? But this
21 was a document sent by the debtor to creditors that
22 included proposed plan treatment, fair?

23 A. That is correct.

24 Q. So I guess I'd ask do you still think it
25 would be unfair to characterize this as a proposal?

1 MR. MANN: Objection to form.

2 THE WITNESS: What I'm saying is that
3 this looks like an early draft to begin to gestite a
4 plan. The difference between a proposal and a
5 working draft to begin to put something -- ideas
6 together versus a formal proposal they are massively
7 different things.

8 BY MR. KISSNER:

9 Q. Can you tell me a little bit about how
10 those things would differ then?

11 A. This looks like a draft so people can
12 begin to think through what a plan of re-org would
13 look like.

14 Q. Sure. But you said that an early draft
15 is different from a formal proposal so I guess I'm
16 just trying to better understand what that
17 difference would be.

18 A. Well, it would be characterized as a
19 formal proposal. This doesn't look like it's
20 characterized that to me. I have not seen this in
21 this form before but as a characterization it
22 doesn't look like a formal proposal to me.

23 Q. Do you think -- strike that.

24 Do you think the distinction between a
25 early working draft and a formal proposal is

1 significant?

2 MR. MANN: Objection to form.

3 THE WITNESS: Yes.

4 BY MR. KISSNER:

5 Q. Could you describe what the significance
6 of that distinction is?

7 A. An early draft is just an early draft
8 subject to change. Every early draft is subject to
9 material change.

10 Q. Would you say by contrast a formal
11 proposal is less subject to change?

12 A. A formal proposal is basically -- is
13 something that has been vetted and is being proposed
14 formally. An early draft is something that's
15 subject to material change based on status of the
16 case.

17 Q. I see. So the distinction that you're
18 drawing is that one is less firm than the other is
19 that fair?

20 MR. MANN: Objection to form.

21 THE WITNESS: No. No. I'm drawing
22 exactly what I said to you. That there is a
23 difference in drafts and early proposals and early
24 gestation of ideas in a case than formal proposals.

25 BY MR. KISSNER:

1 Q. Maybe we'll just agree to disagree as --
2 on all of that. But?

3 A. That's fine.

4 Q. Do you know that under I'll call it a
5 draft because I'm not -- that's fine because I don't
6 want to get into an argument about what it is.

7 Under this draft do you know how much
8 Enigma would have received on account of its claim?

9 A. I do not.

10 Q. Why don't we look at page 2 of the chart
11 at the very bottom and do you see where it says
12 Enigma secured claim and can you read that to
13 yourself and let me know when you're done?

14 A. I am not going to calculate what Enigma
15 would receive based on this text.

16 Q. I'm not asking to you calculate anything
17 I'm just asking you to read it to yourself and let
18 me know when you're done.

19 A. Okay I'm aware of what this is.

20 Q. Can you tell me what you understand this
21 to mean?

22 A. This looks like Enigma is going to
23 receive based on the language here under a plan of
24 reorganization take-back paper that has certain
25 characteristics associated with them including early

1 call dates.

2 Q. Okay let's break that down a little bit.

3 When you say take-back paper, what does that mean?

4 A. Typically in a restructuring a form of
5 consideration for a creditor could be another form
6 of debt.

7 Q. So a new debt?

8 A. Take-back paper different yes. A new
9 security is a typical form of take-back paper.

10 Q. In a 363 sale would it be typical for
11 somebody to get take-back paper or no?

12 A. A 363 sale is not a plan of
13 reorganization. They are two separate and distinct
14 characteristics.

15 Q. Sorry I did not mean to cut you off?

16 A. In a 363 you're selling assets in a plan
17 you're reorganizing a company.

18 Q. So it would not be typical on a 363 for
19 there to be take-back paper right?

20 A. That's correct.

21 MR. MANN: Objection to form.

22 THE WITNESS: But it can happen.

23 BY MR. KISSNER:

24 Q. And then you said early call dates. Can
25 you explain what that means?

1 A. That means that there are periods of
2 time -- every security that's a debt security has a
3 call schedule. It's that simple they just have a
4 call schedule.

5 Q. Can you elaborate on that?

6 MR. MANN: Objection to form.

7 THE WITNESS: Not really.

8 BY MR. KISSNER:

9 Q. I guess what does it mean to call?

10 A. Call means a security can be taken out
11 at a certain point in time at a certain price.

12 Q. So repaid?

13 A. Correct.

14 Q. Do you have any idea -- strike that.

15 Do you know the amount of take-back
16 paper Enigma would have received under this draft?

17 MR. MANN: Objection to the form.

18 THE WITNESS: It doesn't specify, but it
19 does say that received the Enigma secured note in
20 the amount of the Enigma secured claim. Reading
21 text simply, it says the amount of secured claim.

22 BY MR. KISSNER:

23 Q. Do you understand that to suggest that
24 there would be a reduction in principal from the
25 amount owed to Enigma prior to the case?

1 MR. MANN: Objection to form.

2 THE WITNESS: That's not what it says

3 here.

4 BY MR. KISSNER:

5 Q. Okay. But pursuant to a early call
6 schedule if it was repaid early it would be repaid
7 for less than the principal amount, fair?

8 MR. MANN: Objection to form.

9 THE WITNESS: Correct.

10 BY MR. KISSNER:

11 Q. Do you have any idea what happened with
12 this draft after it was shared with the parties?

13 A. Yes.

14 Q. Could you just explain to me or describe
15 it to me?

16 A. The April 7th I think or April 6th when
17 you see this draft was early stages in the
18 operational history of the company from the
19 advisor's perspective. Over a series of time, we
20 have realized that the operations of this company
21 were significantly worse than we could have actually
22 thought they would be.

23 During that time period, they lost at
24 least two licenses, Florida and New Mexico which had
25 to be shut down.

1 We had significantly software problems.
2 We had revenue go from weekly 5 million to like two
3 and a half basically 50 percent of reduction. We
4 were hemorrhaging cash and it is my -- I don't know
5 why this was effectively this particular draft one
6 way, but it became a lot harder for the company to
7 support additional debt capacity in a
8 reorganization, you know, as time went on.

9 So I don't know why particularly this
10 went away, but I will tell you that you as part of
11 our process of evaluation, things change in this
12 company pretty quickly which then cause as I said to
13 you draft term sheets to always can materially
14 change.

15 Q. Okay. You said that things changed
16 pretty quickly right?

17 A. Uh-huh.

18 Q. Do you know where -- Strike that.

19 Do you know approximately when things
20 began to change pretty quickly?

21 A. I can't put an exact date on it for you
22 to be honest.

23 Q. Do you know if it was in April of 2023?

24 A. We -- in April, we were still -- we were
25 still finishing the plan in terms of the company's

1 operational outlook. So I can tell you that it was
2 not -- we did not have a firm opinion. I did not --
3 on April 6th of where we were going to end up as a
4 company at that point.

5 Q. Had things changed pretty quickly by
6 May 2023?

7 A. I'd need to go back and check the date
8 for you on the software issue, and on the license
9 issue. I'm happy to get back to you I do not know
10 those dates off the top of my head.

11 Q. Fair enough. And I apologize, when you
12 said the software issue to what does that refer and
13 I might have just forgotten?

14 A. The CCOS has had significant operational
15 problems for many years.

16 Q. Okay.

17 A. So we continuously had operational
18 problems with CCOS.

19 Q. Can you describe some of those?

20 A. Not -- basically not working with
21 OptConnect correctly, having basically software
22 issues there. Not recognizing the cash correctly.
23 Not, you know, basically not working well at the
24 actual DCM bases. So these were all things that
25 Chris was working on continuously to improve.

1 Q. We'll talk about those in a sec.

2 Do you know if things had changed by

3 June 2023?

4 A. Yes.

5 Q. Okay.

6 A. Things continued to get worse from April

7 through the auction date. Every -- every single

8 phase of that, things would continue to decelerate,

9 not accelerate.

10 Q. Who's OptConnect?

11 A. OptConnect is the telecom provider.

12 Q. So they provide Internet access to the

13 DCMs?

14 A. Yeah.

15 Q. And then you mentioned that one of the

16 issues that you were having is the machines were not

17 correctly recognizing cash; is that correct?

18 A. That's correct.

19 Q. To your knowledge, what does that mean,

20 what's the consequence of not recognizing cash?

21 A. Effectively there are risks knowing what

22 your current cash balances are in terms of

23 transaction volume. So when dollars go in and they

24 recognize \$80 instead of a hundred you know your

25 revenues going to be lower when you reconcile.

1 Q. So all of these issues that we've been
2 talking about, did that in your opinion impact the
3 ability to consummate a plan of reorganization?

4 A. No.

5 Q. No. Okay.

6 All right we're going to go back to
7 Tab 11 in your binder which was marked earlier as
8 Exhibit 6. And I believe you talked about this
9 document with Mr. Higgins for a bit so I'm going to
10 try and not repeat anything that he said but if I do
11 please don't hold it against me okay.

12 A. Okay I think I have the right document.

13 Q. And it's document number 392 at the top?

14 A. Is that the he'll r engagement letter
15 again.

16 MR. MANN: You're on Tab 9.

17 MR. KISSNER: Tab 11 I'm sorry.

18 THE WITNESS: You said six. Sorry.

19 BY MR. KISSNER:

20 Q. It's tab 11. Exhibit 6. It's a screwy
21 system.

22 A. No problem.

23 Q. And can you remind me what was this
24 document again?

25 A. Auction and bidding procedures, the bid

1 procedures.

2 Q. And this was filed with the bankruptcy
3 court, correct?

4 A. It is.

5 Q. And in your experience advising on 363
6 sale processes, it's typical for a motion like this
7 to be filed with the bankruptcy court, fair?

8 A. Bid procedures are normal course of
9 business.

10 Q. And I won't make you read the whole
11 thing, but I'm just going to ask if you recall does
12 this document indicate that there was a stalking
13 horse for the debtor's assets?

14 A. I don't recall.

15 Q. Why don't we turn to page 2 which in the
16 upper right-hand corner it says page 3 of 51. Can
17 you look at the chart in the top row and read to me
18 what it says?

19 A. Deadline for selecting designated
20 stalking horse.

21 Q. And what's the date next to that?

22 A. April 21st.

23 Q. And on or about which date was this
24 document filed?

25 A. Why don't you just enter it for the

1 record 4/7/23.

2 Q. So does that refresh your recollection
3 as to whether or not this document indicated that a
4 stalking horse had been selected?

5 MR. MANN: Objection to form.

6 THE WITNESS: I did not -- we did not
7 have a stalking horse selected in this document.

8 BY MR. KISSNER:

9 Q. But a stalking horse was eventually
10 selected, right?

11 A. Yes.

12 Q. Do you know about when that was?

13 A. I don't recall.

14 Q. But it was after the debtors sought
15 approval of its bid procedures, right?

16 A. I don't recall.

17 Q. Well, we said that these were the bid
18 procedures filed with the court right and they were
19 filed on April 7th?

20 A. Yes.

21 Q. And the deadline to select a stalking
22 horse was April 21st so would it be fair to say that
23 the debtor did not seek approval of the stalking
24 horse -- strike that.

25 Is it fair to say that the debtor had

1 not selected a stalking horse at the time the bid
2 procedures motion was filed?

3 A. I don't recall the timing.

4 Q. Okay. Do you have reason to disagree
5 with the statement that the debtor did not select a
6 stalking horse until after the bid procedures were
7 filed?

8 MR. MANN: Objection to form.

9 THE WITNESS: I don't recall the timing
10 no matter how many times you say the same sentence.

11 BY MR. KISSNER:

12 Q. I guess I'm a little confused because we
13 have the bid procedures motion here, right?

14 A. All I'm saying is I don't recall the
15 exact date of the stalking horse selection.

16 Q. That's fair. And I guess --

17 A. You're asking me whether it was done
18 before the bid procedures after the bid procedures
19 or before the 21. I am telling you I don't recall
20 the exact date of the selection of the stalking
21 horse.

22 Q. Got it. I think I understand. So
23 you're saying it could be that the debtor had
24 selected a stalking horse but just didn't announce
25 it in this motion?

1 MR. MANN: Objection to form.

2 THE WITNESS: I am not saying that at
3 all. I am just saying I don't recall.

4 BY MR. KISSNER:

5 Q. Okay. In your experience advising
6 parties in connection with 363 sales, is it typical
7 for a stalking horse to be selected by the time the
8 bid procedures are filed?

9 MR. MANN: Objection to form.

10 THE WITNESS: Typically it is after the
11 bid procedures, but every -- every situation is
12 different.

13 BY MR. KISSNER:

14 Q. Okay. Let's turn to Tab 12 which I'm
15 going to ask the court reporter to mark as
16 Exhibit 11.

17 (Exhibit 11 marked.)

18 BY MR. KISSNER:

19 Q. Do you recognize this document?

20 A. I do. It's my declaration in support of
21 debtor's approving auction procedures.

22 Q. So fair to say that you're familiar with
23 this document?

24 A. I did. I am.

25 Q. Let's turn to the second page.

1 A. I am on the second page.

2 Q. Could you just read paragraph 4 to
3 yourself real quick and let me know when you're
4 done.

5 A. I am done, sir.

6 Q. And before you were -- I believe you
7 mentioned a teaser that had gone out. Is this the
8 teaser that you were talking about before?

9 A. Yes.

10 Q. Okay. And so Province had already sent
11 out a teaser to the market by the time this
12 declaration was filed, fair to say?

13 A. If I remember correctly March 1st.

14 Q. Okay. Great.

15 Let's turn to Tab 9 which we'll mark as
16 Exhibit 12.

17 (Exhibit * marked.).

18 BY MR. KISSNER:

19 Q. Do you recognize this document?

20 A. Sorry. I might be on eight. Oh, the
21 teaser?

22 Q. Yeah. Do you recognize it?

23 A. I've seen this document.

24 Q. Okay. And is this the marketing teaser
25 that's referred to in your declaration and you were

1 talking before?

2 A. This is the teaser we sent out on
3 March 1st.

4 Q. Did you look at page 3 it's the that
5 says executive summary at the top.

6 A. Sure.

7 Q. We'll stay there but before we talk
8 about it just to be sure, did you create this
9 document?

10 A. Tanner James created this document. And
11 the rest of the Province staff.

12 Q. Okay. Do you have any reason to believe
13 that this document isn't true and accurate?

14 A. This document relies a hundred percent
15 on company books and records and testimony of Chris
16 McAlary. This was not a document that was created
17 by Province, by their information. This is books
18 and records of the company and Chris McAlary.

19 Q. But subject to that caveat at the time
20 this was prepared, you didn't have any reason to
21 believe that anything in here was false, right?

22 A. As I said this was prepared by Chris
23 McAlary and the company with the help, assistance of
24 Province based on their books and records.

25 Q. And that's all in this disclaimer here

1 I'm just making sure just as professionals that you
2 didn't have any knowledge actual knowledge at the
3 time that anything in here was incorrect?

4 A. As I've said to you we relied on Chris
5 McAlary and the books and records of the company.

6 Q. I understand that, but do you understand
7 that there's a distinction between relying on
8 information and having actual knowledge that
9 information may or may not be correct?

10 A. Again we relied on the books and records
11 of the company and miss McAlary.

12 Q. Did you have actual knowledge at the
13 time that the books and records and Chris McAlary
14 were incorrect?

15 MR. MANN: Objection to form.

16 THE WITNESS: Again, we relied on the
17 books and records provided by Chris McAlary and the
18 company.

19 BY MR. KISSNER:

20 Q. We can do this all day until you answer
21 the question?

22 A. I did.

23 MR. MANN: It's asked and answered.

24 THE WITNESS: It's asked and answered.

25 BY MR. KISSNER:

1 Q. Okay. I just don't understand why you
2 can't tell me if you had actual knowledge at the
3 time that this was created that anything in here was
4 false that's all.

5 A. What we are telling you is as every
6 advisor, we are relying on information from books
7 and records of the company. We are also relying on
8 the CEO Chris McAlary. That is what goes into this
9 document.

10 Q. Okay. Do you understand the distinction
11 between relying on documents and having actual
12 knowledge of the truth of the documents?

13 A. Everything that goes in is relied upon
14 by a third party. We can do this all day, but we
15 rely on books and records of -- and the CEOs to
16 basically create all these documents.

17 Q. You said you thought this was created
18 around March 1st?

19 A. No. I told you this was sent out as a
20 teaser around March 1st.

21 Q. Do you know when it would have been
22 created?

23 A. Prior to that since the beginning of the
24 case whenever we -- I actually don't know the date
25 that it started. But prior to that obviously.

1 Q. And in your prior declaration, I think
2 it says that this was sent to approximately 48
3 parties, fair?

4 A. Fair.

5 Q. If you look at the bottom of page 3 the
6 lower right-hand corner and it's the paragraph in
7 bold beginning initially, and just read it to
8 yourself?

9 A. Uh-huh.

10 Q. And then do you see the sub bullet
11 beneath that beginning as of February 23rd, do you
12 see that?

13 A. I do.

14 Q. So would it be fair to say that this
15 document was likely created in or after
16 February 2023?

17 A. It is likely it was created in or after
18 February 23rd.

19 Q. Okay. And then you've read it before to
20 yourself could you just read for the record the
21 sentence starting initially?

22 A. Initially Coin Cloud is seeking a plan
23 of reorganization co sponsor willing to provide exit
24 financing in the form of new equity capital or debt
25 financing, but is open to alternative proposals.

1 Q. In your own words what do you understand
2 that sentence to mean?

3 A. It means that at this point in time of
4 the case, the DIP lender had certain milestones
5 those milestones basically in the beginning gave us
6 time to try to reorganize the company as a going
7 concern. This is basically signaling to the
8 marketplace that we are trying to reorganize as a
9 going concern with a plan sponsor. Clearly if other
10 parties who are interested in this company have
11 other ideas we will obviously consider everything.

12 Q. So at the time you sent this out on or
13 about March 1st, the company was still pursuing a
14 plan sponsorship transaction?

15 A. The CEO Chris McAlary was hoping to
16 reorganize his company and we were working toward
17 trying to get a plan of reorganization together.

18 Q. Did there come a time that you stopped
19 attempting to pursue a plan of reorganization
20 transaction?

21 A. As you see in the disclosure statement
22 and early on is we pursued a toggle plan. And at
23 all times we marketed and gave anybody who was
24 potentially interested in this company the option to
25 be a plan sponsor and then eventually if they had

1 another structure whether it was a 363 or otherwise,
2 they had an option.

3 There was never anything off the table
4 for any potential investor into the company.

5 Q. And the auction that was on June 2nd,
6 right?

7 A. Correct.

8 Q. Do you remember the auction?

9 A. I do.

10 Q. It was long right?

11 A. I sat in a chair in New York City for
12 12 hours.

13 Q. I sat in a hotel lobby in London until
14 530 in the morning.

15 A. Understood.

16 Q. With my wife on her birthday.

17 Was would it be fair to say that up
18 until the auction that occurred on June 2nd, the
19 company was still open to pursuing a plan
20 sponsorship transaction?

21 A. As I said we were looking at every type
22 of transaction possible.

23 Q. Sure. So you?

24 A. Including at the auction.

25 Q. Okay. So at the auction, the company

1 was still soliciting interest strike that that's a
2 bad question.

3 At the auction, the company was still
4 willing to consider a plan sponsorship transaction?

5 A. The company was always willing to
6 basically consider anything that realized the best
7 outcome for the company.

8 Q. So let's go back to your declaration
9 which was Tab 12 and that was your declaration dated
10 April 7th and in paragraph 4 we were discussing and
11 you also --

12 A. Do I have the right tab again is it 12?

13 Q. Yes?

14 A. Paragraph 4.

15 Q. Paragraph 4 says and I think you seemed
16 to recall earlier that you contacted about 48
17 potentially interested parties; is that correct?

18 A. That's what it says.

19 Q. Do you recall if you contacted any
20 additional parties after April 7th?

21 A. I am sure we contacted additional
22 parties as we received inbound phone calls.

23 Q. Do you have any sense of how many that
24 would have been ballpark?

25 A. Five to ten.

1 Q. Five to ten.

2 Now, did you receive -- strike that.

3 You said eventually you guys secured a
4 stalking horse, right?

5 MR. MANN: Objection to form.

6 THE WITNESS: Yeah, we had a stalking
7 horse bid.

8 BY MR. KISSNER:

9 Q. So it would be --

10 A. Which was approved just so you know by
11 Enigma which is your client, Genesis and the
12 consultation parties just to be clear for the record
13 that everything you've been talking about the teaser
14 had all been approved by the consultation parties.

15 Q. Okay. Thank you for clarifying that for
16 the record.

17 Since you were successful in signing up
18 a stalking horse is it fair to say that you received
19 some bids from people interested in being a stalking
20 horse?

21 A. We received multiple term sheets before
22 we selected the final stalking horse.

23 Q. Okay. Do you have any recollection of
24 about how many term sheets?

25 A. I do.

1 Q. How many?

2 A. We received about four term sheets.

3 Q. About four term sheets?

4 A. Yes not necessarily all qualified

5 bidders based on the bid procedures but we received

6 four term sheets.

7 Q. Okay. We'll look at a couple of them

8 and as we do so we can talk about qualifications and

9 otherwise. Sound good.

10 A. Works for me.

11 Q. Okay. Is everybody good by the way I'm

12 sort of going to get into a -- we're going to walk

13 through some documents. Okay great let's go to

14 Tab 13 and I'm going to ask this be marked as

15 Exhibit 13 that's easy?

16 (Exhibit 13 marked.)

17 BY MR. KISSNER:

18 Q. Do you recognize this document?

19 A. I do.

20 Q. Can you describe it to me?

21 A. It is a proposal from Aetherial Wolf.

22 Q. Who's Aetherial Wolf?

23 A. To this day, I'm not sure.

24 Q. Did you ever talk to any representative

25 of Aetherial Wolf?

1 A. We did. I can't recall the gentleman's
2 name but we spoke to the -- we pursued this like we
3 would any other term sheet and had a conversation
4 with the Aetherial Wolf group.

5 Q. Was it a gentleman named Don Greetham?

6 A. That's exactly who it was.

7 Q. Can you describe your conversations with
8 Mr. Greetham?

9 A. We asked him to walk us through his term
10 sheet like we do every time we receive a term sheet
11 so that we can gain knowledge base of all of the
12 details of their term sheet.

13 Q. How would you describe the tone of those
14 conversations?

15 A. Normal course.

16 Q. Normal course. How many conversations
17 do you think you had with Mr. Greetham?

18 A. I'd say no more than two is my
19 recollection.

20 Q. Okay. So you had two conversations.
21 And I realize this was a couple months ago, so it's
22 always perfectly fine to just say I don't recall.

23 A. Sure.

24 Q. Do you remember the first conversation
25 you had with Mr. Greetham?

1 A. I don't recall the details of it.

2 Q. Okay. Do you remember anything from it?

3 A. I remember leaving him with a question
4 to provide proof of funds.

5 Q. Did you leave him with any other
6 questions?

7 A. Not that I recall.

8 Q. Did you have any conversations with
9 folks at Province or the debtor about your
10 conversation with Mr. Greetham?

11 A. I think it was a group call with
12 Mr. Greetham. There was -- there was always
13 multiple parties from Province probably on it.

14 Q. What did you think of Mr. Greetham?

15 MR. MANN: Objection to form.

16 THE WITNESS: I have no opinion. I
17 don't know him that was the first conversation I've
18 ever had.

19 BY MR. KISSNER:

20 Q. What did you think about -- strike that.
21 When you had a conversation with Mr. Greetham --
22 strike that.

23 How did that first conversation with
24 Mr. Greetham come about?

25 A. We received the term sheet.

1 Q. Oh, from Aetherial Wolf?

2 A. (Nods head in the affirmative.)

3 Q. What did you think of the term sheet?

4 A. It -- the plan of reorganization did not
5 seem realistic.

6 Q. And when we're talking about the term
7 sheet that's the document in front of you that's
8 marked as Exhibit 13 right?

9 A. Uh-huh.

10 Q. Okay. Let's talk about your second
11 conversation with Mr. Greetham. Tell me a little
12 bit about that?

13 A. I don't even recall. I don't recall it.
14 He never -- we never received proof of funds from
15 Mr. Greetham.

16 Q. Do you know what you talked about with
17 him in that second conversation?

18 A. I don't recall like I said if we had one
19 or two. I don't even recall the second
20 conversation.

21 Q. Do you recall the tone or tenor of that?

22 MR. MANN: Object to form.

23 THE WITNESS: I don't recall the
24 conversation in any way.

25 BY MR. KISSNER:

1 Q. Sitting here today, do you have any
2 thing you'd like to say about Mr. Greetham?

3 MR. MANN: Objection to form.

4 THE WITNESS: I have no knowledge based
5 on Mr. Greetham other than that conversation. My
6 first conversation.

7 BY MR. KISSNER:

8 Q. Okay let's talk about this term sheet a
9 little bit.

10 So you received this term sheet from
11 Aetherial Wolf or on behalf of Aetherial Wolf,
12 right?

13 A. Uh-huh.

14 Q. Do you know who developed it?

15 A. Nope.

16 Q. Probably Aetherial Wolf?

17 MR. MANN: Objection to form.

18 THE WITNESS: I have no knowledge of
19 who, other than that it was provided.

20 BY MR. KISSNER:

21 Q. Now, does this set forth a particular
22 transaction?

23 MR. MANN: Objection to form.

24 THE WITNESS: This basically sets forth
25 two particular transactions. A plan of

1 reorganization or effectively a purchase of the
2 debtor's assets.

3 BY MR. KISSNER:

4 Q. Would you characterize this as a
5 proposal?

6 MR. MANN: Objection to form.

7 THE WITNESS: I would characterize this
8 as a term sheet of a proposal.

9 BY MR. KISSNER:

10 Q. Okay. We were talking before a little
11 bit about the distinctions between a draft and a
12 final proposal.

13 Where on that spectrum would you put
14 this?

15 A. This would have been an initial proposal
16 from a third party that effectively begins the
17 discussion purposes around getting to a transaction.

18 Q. So a little more than a draft but not
19 quite a final proposal fair?

20 A. I would say that any initial proposal is
21 an initial proposal it's not a draft. It doesn't
22 mean it's a final proposal it just means it's not a
23 draft. It's an initial proposal.

24 Q. Now you said that this term sheet -- can
25 I call it a term sheet are you fine with that

1 characterization?

2 A. I think a term sheet is fine.

3 Q. You said this term sheet proposes or
4 discusses is discuss okay are you okay with calling
5 it a discussion?

6 A. I'm fine.

7 Q. Okay. You said that this term sheet
8 discusses two potential types of transactions,
9 right?

10 A. (Nods head in the affirmative.).

11 Q. Can you just say "yes" or "no", sorry?

12 A. Yes.

13 Q. And one of them is for a plan of
14 reorganization, correct?

15 A. It is.

16 Q. Would you characterize this as a
17 potential plan sponsor transaction?

18 MR. MANN: Objection to form.

19 THE WITNESS: How would you like me to
20 characterize this can you repeat the question or
21 rephrase it?

22 BY MR. KISSNER:

23 Q. So -- that's fair. I just want to make
24 sure that we're using consistent terminology?

25 A. I understand.

1 Q. So this discusses or contemplates two
2 different types of transactions and I'm asking would
3 it be fair to say that one of them is a potential
4 plan sponsorship transaction?

5 A. This is the plan of reorganization you
6 can characterize as a plan sponsor.

7 Q. Before you said you didn't think that it
8 was realistic, right?

9 A. Correct.

10 Q. Can you tell me why that is or why you
11 thought that?

12 A. That they -- the way he described the
13 \$74 million of -- for the quote consideration across
14 the capital structure and did not seem like it was
15 realistic in terms of his ability to execute on
16 something in this or have the source of funds for
17 it.

18 Q. Was there anything other than source of
19 funds that made you question the ability to execute?

20 A. No I come at these things unemotionally,
21 so I take each proposal very seriously and this term
22 sheet I took seriously like every term sheet, but
23 given the cash flows of the company, I was very
24 interested to see his source of funds that's where I
25 was questioning.

1 Q. And you never received source of funds?

2 A. No, I requested it.

3 Q. Can we look at this paragraph that says
4 plan of reorganization. I'll just ask you do you
5 know what the proposed consideration to Enigma was
6 under this term sheet?

7 A. I'd have to relook at it if you want me
8 to try to --

9 Q. Sure. Why don't you take a look.

10 A. But I don't -- Item 6 says 9.850 million
11 net 8.162500 for the repayment of the senior
12 creditor Enigma.

13 Q. That's a lot of money, right?

14 MR. MANN: Objection to form.

15 THE WITNESS: It is 9.850 million.

16 BY MR. KISSNER:

17 Q. It's a lot of money to me.

18 Now this also discussed a potential sale
19 transaction, correct?

20 A. Correct.

21 Q. Do you know what the headline purchase
22 price for the sale transaction was?

23 A. 15.8.

24 Q. Did you think that the potential sales
25 transaction was realistic?

1 A. Again, we had no idea we explored it
2 with him, asked him what he was buying and in our
3 conversation, it was unclear.

4 Q. I guess what I'm getting at is that when
5 you looked at this term sheet you said. -- Strike
6 that?

7 I guess what I'm getting at is that before you said
8 that you had some discussions with folks at Province
9 about this term sheet and your impression had been
10 that the plan of reorganization was quote not
11 realistic

12 A. That's not what I said. What I said was
13 Province people were on the phone call with
14 Aetherial Wolf. We had a discussion with Aetherial
15 Wolf to whether we thought what his plan of
16 reorganization looked like and we thought post that
17 conversation it wasn't realistic.

18 Q. And you left that first conversation and
19 you had asked Aetherial Wolf to provide proof of
20 funds right?

21 MR. MANN: Objection to form.

22 THE WITNESS: Correct.

23 BY MR. KISSNER:

24 Q. Did you ask them to provide anything
25 else?

1 A. Not to my recollection.

2 Q. And did they ever respond to you with
3 more information after that first conversation?

4 A. I don't recall ever receiving proof of
5 funds.

6 Q. And you said you don't recall a second
7 conversation?

8 MR. MANN: Objection to form.

9 THE WITNESS: I don't recall.

10 BY MR. KISSNER:

11 Q. Do you recall Mr. Greetham accusing you
12 of being a criminal?

13 MR. MANN: Objection to form.

14 THE WITNESS: I do not.

15 BY MR. KISSNER:

16 Q. Do you recall him accusing the debtor as
17 being run by a criminal?

18 MR. MANN: Objection to form.

19 THE WITNESS: I don't remember our
20 conversation at all. It was very early in our
21 process.

22 BY MR. KISSNER:

23 Q. He was fairly angry though wasn't he?

24 MR. MANN: Objection to form.

25 THE WITNESS: I remember that Don was

1 very -- spent half the call discussing his accolades
2 as an investor.

3 BY MR. KISSNER:

4 Q. He has a pretty strong personality
5 right?

6 MR. MANN: Objection to form.

7 THE WITNESS: I don't -- I've had one
8 conversation with him, so I don't want to judge him
9 off of one conversation that I remember.

10 BY MR. KISSNER:

11 Q. That's fair. Just like I hope you don't
12 judge me for to.

13 So is it fair to say that you didn't
14 move forward with Aetherial Wolf?

15 A. I think it's fair to say Aetherial Wolf
16 didn't move forward with the debtor.

17 Q. Did you consider this bid to be
18 qualified?

19 A. I needed proof of funds for it to be
20 qualified.

21 Q. And you had mentioned before the concept
22 of qualified bid so that's why I ask you about it
23 now. But I realize we haven't really talked about
24 that.

25 What's a qualified bid?

1 A. Well, if you want to go refer to the bid
2 procedures, I don't have them memorized off the top
3 of my head and I think it's in Section 7. It lists
4 out the -- there might be ten to 12 different
5 qualifications in general.

6 So if you'd like to read those into the
7 record, I will state that's what a qualified bid is.

8 Q. No, I don't think that's a good use of
9 time.

10 A. Just there's a multiple facet, but one
11 of them is for -- in a very early stage process is
12 proof of funds.

13 Q. So if a guy of off the street came up
14 and handed a dollar that's not qualified, fair?

15 A. Correct.

16 Q. And I honestly -- you said that you
17 didn't feel that this was qualified?

18 A. I felt like we needed to see proof of
19 fund because it was a very aggressive bid.

20 Q. And by aggressive what do you mean by
21 that?

22 A. I mean that the -- that it was new to
23 us, it had a lot of moving parts, and in order for
24 this to be accomplished, you would need a
25 significant amount of capital. So any -- with that

1 amount of capital, that he needed in order to
2 accomplish this, it recalled that we needed proof of
3 funds in order to see that if he actually had the
4 wherewithal to handle such an aggressive bid in
5 terms of the amount of money that would be needed to
6 transact.

7 Q. And when Aetherial Wolf failed to
8 provide proof of funds did you or anybody at
9 Province ever follow up with them, do you recall?

10 A. I don't recall off the top of my head.
11 I would have to check my notes.

12 Q. Fair enough. Let's turn to Tab 16 which
13 we'll mark as Exhibit 14.

14 (Exhibit * marked.)

15 BY MR. KISSNER:

16 Q. Do you recognize this document?

17 A. Yes, this was the initial term sheet and
18 I think -- and don't quote me whether it was the
19 first one but this was the term sheet from if he AKA
20 philosophy group iteration one philosophy group.

21 Q. And this is one of the term sheets that
22 you received from the parties interested in being a
23 stalking horse?

24 A. Correct.

25 Q. And what kind of transaction did you

1 understand this term sheet to propose?

2 A. This was going to be a plan.

3 Q. A plan sponsorship transaction?

4 A. Correct as you can read on page 2.

5 Q. Plan sponsor.

6 And what was the total consideration

7 that philosophy was going to provide as plan

8 sponsor?

9 A. I'd like -- I can't give you a direct
10 answer on that. It is not -- the headline numbers
11 and the real purchase price aren't the same thing.

12 So.

13 Q. Could you explain why?

14 A. Yes. Because despite having a
15 \$18.5 million, quote, purchase price, that also
16 included the cash, and then they also would take out
17 any cure costs, they would also take out
18 professional fees, they've had about four or five
19 different caveats within this that mathematically I
20 can't explain to you in this circumstance right now.

21 So the headline number is 18.5. But
22 that's not what actually would be the consideration
23 that would come to the estate.

24 Q. Does this set forth a proposed recovery
25 to Enigma?

1 A. It does.

2 Q. Can you tell me what that proposal was?

3 A. For Genesis and Enigma you would get
4 take-back paper of \$3 million.

5 Q. And there's an early call schedule?

6 A. They do have a call schedule.

7 Q. So not all that different from what we
8 were talking about before, just maybe different
9 numbers?

10 A. There was a proposal to Enigma for
11 \$3 million with a call schedule.

12 Q. And then there was also some cash on top
13 of this subject to adjustment, right?

14 A. For Enigma and Genesis is your question?
15 Can you please elaborate on your question.

16 Q. Sure. So if we turn back to page 2 to
17 the base purchase price which I understand is a
18 headline number that might not correlate with the
19 reality of cash in the door, and that base purchase
20 price is \$18.5 million fair?

21 A. Uh-huh.

22 Q. There's a deduct from that of cure
23 costs, right?

24 A. Uh-huh.

25 Q. And the 18.5 is going to consist of

1 \$15.5 million less cure plus \$3 million of take-back

2 paper, right?

3 A. Correct.

4 Q. Do you know how the \$15.5 million would

5 have been allocated?

6 A. It does not say. No, I do not.

7 Q. Presumably it would have just been put

8 into the bankruptcy waterfall and it would have gone

9 to whoever's entitled to it, fair?

10 A. Typically if there's a winning bid and

11 there's a cash portion in all bankruptcies it is

12 distributed based on the waterfall. That's how it's

13 typically done.

14 Q. So a creditor depending on their

15 priority or their collateral and the amount of cash

16 available they would receive what they're entitled

17 to based off of the bankruptcy code waterfall right?

18 A. Typically.

19 Q. Now was philosophy selected as the

20 stalking horse?

21 A. They were not.

22 Q. Why not?

23 A. They also didn't provide proof of funds.

24 Q. Did you consider this to be a qualified

25 bid?

1 A. It was never qualified until because we
2 never got proof of fun. This Philosophy group had
3 never showed us who their investor base was in order
4 to execute this until after the stalking horse was
5 picked. And even then, it was a -- it was not done
6 in your typical fashion. They showed us a
7 screenshot of a random bank account which we
8 couldn't actually verify. Other than their word
9 that this was their money.

10 So in a sense this was a term sheet we
11 spent a tremendous amount of time with Philosophy
12 group trying to get them there, you know, and yet we
13 never really got real proof of funds in iteration
14 one of Philosophy group because it changed.

15 Q. There was a further iteration of this,
16 then?

17 A. Not of this. They created. They lost
18 their investment group here. He cobbled together
19 eventually a new investor group later on in the
20 process but not at this particular time in this term
21 sheet.

22 Q. Okay we can talk about that later.

23 A. Sure.

24 Q. Why don't we go to Tab 19 in your binder
25 which I'll ask the court reporter to mark as

1 Exhibit 15.

2 (Exhibit 15 marked.)

3 BY MR. KISSNER:

4 Q. Do you recognize this document?

5 A. This is the new stalking horse bidder.

6 Q. What does that mean?

7 A. This is telling the court that rocket
8 coin was picked as the stalking horse in the
9 process.

10 Q. Do you know what kind of transaction
11 this related to?

12 A. I've got to go back. Just give me one
13 second. This says a 363.

14 Q. Okay. Do you know what the purchase
15 price was?

16 A. The initial stalking horse was
17 16.75 million, which included 250 for the litigation
18 trust. I remember this term sheet very well.

19 Q. And then there were additional
20 components of the consideration, right?

21 A. There was a lot of uncertainty about the
22 rest of the term sheet in terms of quantifying at
23 the time. The company did not know how many
24 machines it was going to take. The company did not
25 know who were they going to reject. The company did

1 not know what critical vendors they wanted to keep.
2 The company did not know what DCMs they wanted to
3 cure if they wanted to keep the enterprises
4 associated with them together.

5 So, yes, there was additional thought
6 process here in an initial term sheet. But it
7 wasn't fully quantified at this particular moment in
8 time.

9 Q. Okay I guess what I was getting at is
10 that after cash, there's also the payment of cure
11 costs and the a assumption of liabilities, right?

12 A. Critical vendor payments. That's what
13 that refers to.

14 Q. So would it be fair to say that under
15 the Philosophy term sheet there was a headline
16 purchase price that was probably going to be lower,
17 and then under the Rocket Coin -- sorry the stalking
18 horse term sheet, there was a purchase price that
19 was going to be increased by other buckets of value,
20 fair?

21 A. I would say -- I would tell you that
22 this stalking horse pick of the term sheet was a
23 better -- was a better term sheet than the original
24 Philosophy group term sheet.

25 Q. Right because the Philosophy one was for

1 better or for worse that was 18.5 minus something
2 and this was 16.75 plus something?

3 A. Again we spoke about this earlier, I'll
4 refresh you. That is picking a purchaser whether it
5 be a stalking horse or the winning bidder, is not
6 just about the full price. In a sense that we have
7 to make sure the diligence is right, the ability to
8 close it right, the -- that they have proof of
9 funds. So I will not characterize it the way you
10 would.

11 Q. Okay. I'm just -- I'm not a financial
12 advisor so I'm just trying to make sure that I
13 understand what these say. That's all.

14 A. Yeah.

15 Q. So how would you characterize it then
16 because you don't like how I did it?

17 A. I would characterize this price was the
18 best as a fiduciary for all creditors.

19 Q. Sure. But I was just asking how would
20 you describe this price because I said perhaps
21 inarticulately this is \$16.75 million plus something
22 else and you said you didn't agree with that?

23 A. I would say that right now
24 \$16.75 million plus uncertain cure costs and
25 critical vendors.

1 Q. And then for the Philosophy term sheet
2 it was 18.5 minus some cure costs and other
3 liabilities?

4 A. It was minus certain liabilities but it
5 was also plus certain amount of debt. So it was
6 minus and plus in the Philosophy.

7 Q. And when the two -- the determination
8 was made not just off of purchase price but on a
9 holistic group of qualitative factors that this was
10 a superior offer?

11 A. Correct.

12 MR. MANN: Objection to form.

13 BY MR. KISSNER:

14 Q. And does this reflect how many machines
15 the stalking horse intended to purchase?

16 A. It did not.

17 Q. And when I say the stalking horse, do
18 you understand -- well, strike that.

19 Who was the proposed buyer under this
20 term sheet?

21 A. Rocket Coin.

22 Q. And so when I say Rocket Coin or
23 stalking horse, you'll know that I'm referring to
24 Rocket Coin LLC?

25 A. I do.

1 Q. Okay. Does this term sheet reflect how
2 many machines Rocket Coin wanted to buy?

3 A. I don't think in this term sheet they
4 specified the number at this point in time.

5 Q. Right. If you go to page 2 footnote two
6 at the bottom you can read that to yourself, but
7 that might refresh your recollection.

8 A. Yes. Recalling that we had 3500 for
9 sale, obviously, in the field and they were
10 contemplating here keeping between 1800 and 2500 at
11 this point in time.

12 Q. And this one wasn't interested in
13 warehoused unit, fair?

14 A. My recollection is that they were --
15 they were not going to purchase in the initial term
16 sheet the warehouse units.

17 Q. And we've been talking about this as a
18 term sheet so I'm just going -- I'll ask you the
19 same question that I asked you about some of the
20 others.

21 Would you consider this a draft?

22 A. This is an initial term sheet proposed
23 by Rocket Coin that was then verified in order to
24 become a stalking horse bid.

25 Q. Would you consider it a formal proposal?

1 A. It was a formal proposal. It's a formal
2 term sheet and proposal.

3 Q. So this notice -- did this attach a
4 purchase agreement?

5 A. I don't recall whether this attached a
6 PA or not.

7 Q. Do you recall when this term sheet was
8 filed with the court?

9 A. I don't know the exact date all I know
10 is that it was after 4/21 so my assumption it was
11 filed around 25th or something.

12 Q. Do you recall if at the time -- strike
13 that.

14 Do you recall if by April 25th the
15 debtor examine Rocket Coin had entered into an
16 executed asset purchase agreement?

17 A. I don't recall.

18 Q. Do you recall when an asset purchase
19 agreement was executed?

20 A. I don't recall.

21 Q. Now, in your experience, do debtors
22 generally select a stalking horse without an
23 executed asset purchase agreement?

24 A. It depends, sometimes yes, sometimes no.

25 Q. What does it depend on?

1 A. The debtor's counsel where we are in the
2 process. So all I'm saying there's no firm rule.

3 Q. Every situations different, right?

4 A. Every situation is different.

5 Q. In your experience, does having an
6 executed asset purchase agreement does that send a
7 signal to the market?

8 A. Yes.

9 Q. What kind of signal?

10 A. It signals that this is a very strong
11 bid and real. So my assumption is that we had an
12 asset purchase but I don't recall if it was filed
13 simultaneously with the term sheet.

14 Q. But maybe I'm a little confused. I
15 thought before you said that you didn't recall if
16 there was an asset purchase agreement executed by
17 this time right?

18 A. Then -- typically there will be we
19 always try to execute a asset purchase agreement my
20 assumption is that there -- I think there was one
21 but I don't recall the exact date if it was filed in
22 the same filing as this one.

23 Q. Now you said that having an executed
24 asset purchase agreement that sends a positive
25 signal to the market?

1 A. It does.

2 Q. Filing for a stalking horse without an
3 executed asset purchase agreement does that send a
4 signal to the market?

5 MR. MANN: Objection to form.

6 THE WITNESS: I think that it's very
7 rarely done. It's done less often because it's a
8 pretty negative thing that if you're only filing a
9 stalking horse term sheet. And a lot of times under
10 your bid that we need to go through the 12, you
11 can't have a stalking horse without filed an asset
12 purchase agreement. So I'm happy to go back through
13 the 12 conditions that you talked about in the bid
14 procedures if you'd like to.

15 BY MR. KISSNER:

16 Q. No. That's okay.

17 What are some of the reasons why not
18 having an executed asset purchase agreement would
19 send a bad signal to the market?

20 MR. MANN: Objection to form.

21 THE WITNESS: I think it's very simple
22 is that not having an executed APA makes it less
23 likely that the buyer is actually going to close.

24 BY MR. KISSNER:

25 Q. Now, I'm not going to ask you to give a

1 legal opinion, but is it your understanding that a
2 party is bound to a proposed transaction before it
3 executes an APA?

4 A. I'm not a lawyer.

5 Q. Do you have an understanding?

6 A. I'm not going to opine on a legal issue.

7 Q. That's fair enough.

8 Do you have an understanding as to
9 whether Rocket Coin was bound to the terms of the
10 stalking horse transaction at the time this was
11 filed?

12 MR. MANN: Objection to form.

13 THE WITNESS: Again that's a legal
14 opinion and I'm not going to opine on whether a
15 client -- whether a third party or our side views
16 them as bound. You can speak to counsel.

17 BY MR. KISSNER:

18 Q. All right let's go to Tab 44. And we'll
19 mark this as Exhibit 16.

20 (Exhibit * marked.) 16.

21 BY MR. KISSNER:

22 Q. Do you recognize this document?

23 A. This is an e-mail right.

24 Q. It is an e-mail.

25 A. Okay.

1 Q. Do you recognize it, though?

2 A. This exhibit is mixing and matching. So
3 are you asking me to recognize the e-mail or
4 recognize the document behind it.

5 Q. Either. Well let's start with the
6 e-mail do you recognize the e-mail?

7 A. I don't recall the e-mail, but I
8 understand the context of the e-mail.

9 Q. Okay what's that context as you
10 understand it?

11 A. This context is that Brett was informing
12 the consultation parties including yourself that
13 Rocket Coin basically didn't have -- didn't have
14 financing.

15 Q. And Brett is Brett Axelrod?

16 A. Yeah.

17 Q. And she's counsel to the debtor?

18 A. She is.

19 Q. And then how about the attachment. Do
20 you recognize this document?

21 A. Are you referring to the stalking horse
22 bid term sheet asset purchase.

23 Q. I am?

24 A. I recognize the term sheet.

25 Q. Can you tell me what it is?

1 A. Sure. This is the amendment and the new
2 stalking horse bid.

3 Q. Okay. Does it set forth a proposed
4 purchase price for the debtor's assets?

5 A. It does.

6 Q. Can you tell me what that purchase price
7 is?

8 A. Three and a half million plus 250 plus
9 plus to use your terminology.

10 Q. Now is that less than the original
11 stalking horse term sheet that we were just looking
12 at and that's marked as Exhibit 15?

13 MR. MANN: Objection to form.

14 THE WITNESS: It is less, but not -- but
15 the math is not simple. The initial term sheet that
16 you looked at, again, you're comparing apples to
17 oranges you need to many compare like minded term
18 sheets in order for you -- for the court to
19 understand what is happening here. The original
20 term sheet at 16 and a half included the cash in the
21 estate. The new term sheet here although lower on a
22 net basis does not include the cash. So if you
23 do -- so the math you have to think about is not
24 apples to apples yes it is a lower price than the
25 term sheet.

1 BY MR. KISSNER:

2 Q. Okay. I was going to say, do you recall
3 the cash that was being purchased under the initial
4 term sheet?

5 A. 9 million.

6 Q. And they're not purchasing the cash
7 here?

8 A. They are not.

9 Q. And the initial term sheet to use my
10 inartful phrasing was 16.75 plus plus, right?

11 A. I would agree that that's what it looks
12 like.

13 Q. And so net of \$9 million cash that would
14 have been \$7.75 million of consideration?

15 A. That would be.

16 Q. Okay. And then this revised term sheet
17 does not include any cash component, right? This
18 revised term sheet does not contemplate purchasing
19 cash from the debtor, correct?

20 A. Correct.

21 Q. If one were to do an apples to apples
22 comparison, one would say that this is a purchase
23 price of \$3.5 million versus \$7.75 million, fair?

24 A. Rocket Coin basically didn't have any
25 money.

1 Q. It didn't have any money?

2 A. Didn't have enough money to complete the
3 prior purchase, they lost their financing from a
4 bank and could not go forward with the different --
5 the prior transaction. They came back here proposed
6 a new transaction and that's what this looks like.
7 They showed us a new proof of funds that would have
8 covered a three and a half plus the 250, plus plus.
9 But Rocket Coin effectively walked away from the
10 initial term sheet.

11 Q. In your experience, have you ever seen
12 that happen before?

13 A. Sure. There are many times in any
14 financial transaction where you thought you would
15 have financing and then financing did not take
16 place.

17 Q. Including with a stalking horse?

18 A. It could happen in any transaction.
19 Stalking horse just being one of them.

20 Q. Had you ever seen that happen on a
21 transaction with a stalking horse?

22 A. I have not been involved directly with a
23 transaction where someone walked way from a stalking
24 horse with financing.

25 Q. Do you recall if one of the

1 qualifications to become stalking horse was proof of
2 financing?

3 A. They had proof of financing, correct
4 that was a qualification, but that's -- again, I'm
5 happy to go back and read the bid procedures.

6 Q. I guess I'm just confused because they
7 had proof of financing but then the financing
8 disappeared?

9 A. (Nods head in the affirmative.)

10 MR. MANN: Objection to form.

11 THE WITNESS: It did.

12 BY MR. KISSNER:

13 Q. Do you think this sent a signal to the
14 market?

15 A. I'm not going to judge what markets --
16 I'm not in the business of judging what the market
17 thinks.

18 Q. But do you think it sent a signal?

19 MR. MANN: Objection to form.

20 THE WITNESS: Again, I'm not in the
21 business of interpreting what the market thinks.

22 BY MR. KISSNER:

23 Q. Right but I guess before you had told me
24 that for example having an executed APA, that sends
25 a positive signal having a stalking horse that sends

1 a positive signal so I'm just asking did this do you
2 think send a signal?

3 MR. MANN: Objection to form.

4 THE WITNESS: I don't think it
5 necessarily has anything to do with the company.
6 The only signal it sends is that Rocket Coin didn't
7 have the funds that they originally thought they
8 had.

9 BY MR. KISSNER:

10 Q. Hopefully I have like an hour, hour and
11 a half left I would say. Do you guys need to take
12 another break?

13 A. Yeah, let me use the bathroom.

14 MR. KISSNER: Let's go off for a couple
15 minutes.

16 (A recess is taken.)

17 MR. KISSNER: We're back on.

18 BY MR. KISSNER:

19 Q. We just came back from a break, did you
20 have any discussions about the content of your
21 testimony during the break?

22 A. I did not.

23 Q. Okay, great. So we were talking a
24 little bit about this revised bid from Rocket Coin.

25 How many other bids did the debtor end

1 up receiving, if you recall.

2 A. The one thing I note about this in your
3 analysis which was incorrect, again is that the
4 number of machines was only 600 to 1,000 versus the
5 old term sheet was a much greater amount. So again
6 the math is different so again I want to be clear
7 that you're comparing apples to oranges. Secondly I
8 think at the time we received -- if you include
9 Aetherial Wolf not all qualified. Rocket Coin,
10 forest road in conjunction with national Bitcoin,
11 Philosophy one. And I'll use that term if that's
12 okay with you. At this point in time. And then a
13 revised rocket coin. So I'd say at that particular
14 moment in time my recollection is roughly four.

15 Q. And by that moment in time, you mean
16 late April, the time of the bid deadline?

17 A. I am saying as of when this was filed on
18 5/12.

19 Q. Got it.

20 A. I'm just using that as my recollection
21 at this point.

22 Q. Fair enough. And you mentioned forest
23 road, you said they were in conjunction with
24 National Bitcoin they were also in conjunction with
25 the DIP lender, right?

1 A. In the beginning.

2 Q. Okay. At some point they no longer
3 were?

4 A. Yes.

5 Q. Do you have any understanding as to why
6 that changed?

7 A. Other than that they weren't interested.

8 Q. Okay. So you were saying that those and
9 by those, I mean Philosophy one, Rocket Coin, forest
10 road and Aetherial Wolf --

11 A. I like that you're using Philosophy one,
12 by the way.

13 Q. Aetherial Wolf I think was the fourth
14 and they weren't qualified. So that's four bids,
15 right?

16 A. At that particular moment in time.

17 MR. MANN: Objection to form.

18 BY MR. KISSNER:

19 Q. But later on there were more bids
20 different bids?

21 A. Well, of course.

22 Q. What other bids do you recall the debtor
23 receiving whether qualified or otherwise?

24 A. Qualified or unqualified before the next
25 time which was May 30th which was the time next term

1 sheets had to be due prior to the auction, we
2 received a Philosophy two and we received the Heller
3 Genesis.

4 Q. Any others?

5 A. Not that I recall.

6 Q. Okay. Let's go to Tab 24 which I'll ask
7 the court reporter to mark as Exhibit 17.

8 (Exhibit 17 marked.)

9 BY MR. KISSNER:

10 Q. You just said you received Philosophy
11 two and Heller, right?

12 A. That is my recollection.

13 Q. Okay we'll take those out of order and
14 we'll start with what I think you referred to as
15 Heller. So looking at Tab 24, which is Exhibit 17.

16 Do you recognize this document?

17 A. I do.

18 Q. Can you tell me what it is?

19 A. This was the initial term sheet for the
20 ATM assets from Heller and I'm not going to say it
21 was initial because all his forms look alike.

22 Q. There were a number of revisions to this
23 over --

24 A. Yes. I don't know which one you're
25 showing me, but there is -- this is the format that

1 Heller Capital typically used to provide a term
2 sheet.

3 Q. If I told you this was one was dated
4 June 1st would that ring a bell to you?

5 A. It would.

6 Q. So is it your understanding that this is
7 a revised version of whatever term sheet they sent
8 before May 30th?

9 A. Correct.

10 Q. Okay. Does this strike that.
11 What is your understanding of the type
12 of transaction that this term sheet proposes?

13 A. This was a basically an 363 as is when
14 is sale.

15 Q. Would you consider this a final proposal
16 or strike that. Would you consider this a formal
17 proposal I believe it's the terminology that we were
18 using before?

19 A. I would say this is initial proposal,
20 correct. Or formal it's all ahead of the auction
21 yes.

22 Q. Did you consider Heller's bid to be a
23 qualified bid?

24 A. We did.

25 Q. And does this set forth a recovery for

1 Enigma?

2 A. It does not is my recollection Heller
3 was buying the assets in this term sheet in
4 conjunction were also buying the software assets at
5 the same time but basically this is an-as when is
6 363 sale and they were just buying the assets.

7 Q. And by the assets, you're referring to
8 what?

9 A. In this term sheet because Heller was
10 negotiating -- or George was negotiating on behalf
11 of Heller and Genesis Coin so everything was done in
12 conjunction so looking at these out of sequence is
13 not correct.

14 This particular part of it was a
15 purchase for the DCMs that were of -- as listed here
16 2200 in storage and 3500 DCMs that were in the
17 field.

18 Q. So it's a total of 5700 DCMs?

19 A. That is what this says.

20 Q. And what was the purchase price for the
21 5700 DCMs?

22 A. 3.7 and split 770,000 for warehouse
23 2.930 for ones that were in the field.

24 Q. But that's 3.7 headline?

25 A. 3.7 headline. And did this have --

1 strike that.

2 Q. Do you recall that some of the term
3 sheets that we were talking about before you were
4 saying that the headline purchase price wasn't
5 necessarily the cash that was going to come in; is
6 that fair.

7 A. That is fair.

8 Q. Does the same caveat apply to this?

9 A. No this is a straight asset purchase for
10 3.7 million for the DCMs plus 1.5 for the or
11 actually at the time roughly \$2 million for the
12 Genesis software.

13 Q. And that was in a separate term sheet
14 but submitted in conjunction with this one?

15 A. And negotiated with the same party
16 negotiating for both. So from the debtor's
17 perspective is they were together.

18 Q. Okay and that was a headline total
19 purchase price of \$5.7 million?

20 A. That's correct.

21 Q. Okay. Did you consider this to be a
22 superior offer to the stalking horse?

23 A. We did.

24 Q. Okay. And what were some of the reasons
25 for that?

1 A. I think very simply, one, this was an
2 as-is when-is sale. Not subject to due diligence.
3 We were very concerned given the operational state
4 of the business that Rocket Coin couldn't close.
5 They had a massive due diligence out. They
6 basically -- the operations were deteriorating
7 immensely at the time of this auction and what I
8 mean by that is one is we talked about this earlier
9 we lost two licenses, we got an e-mail on the day of
10 the auction from Jim Hall that said we have only
11 \$500,000 in cash. We are at dangerously low levels.
12 We've had software problems. We had machines not
13 working. We had a threat up OptConnect who threaten
14 us to turn off -- if we didn't pay them a certain
15 amount of money to turn off our whole business.

16 So at the time walking into this auction
17 we were very concerned that when Rocket Coin decided
18 to look under -- continue to do their diligence here
19 with their large diligence out, which included key
20 employees, that they weren't going to be able to
21 close, and our terms and conditions on the bid
22 procedures was an as is when is sale and this is an
23 as is when is sale. So there was multiple factors
24 besides a headline price that we're taking into
25 account.

1 Q. And Rocket Coin had already burned you
2 before right?

3 A. That hadn't -- we don't get emotional
4 about counterparties. We are looking at this
5 straight on the way we look at any analysis. So
6 that had nothing to do with anything.

7 Q. Right. I'm not accusing you of letting
8 emotions cloud your judgment. I'm just observing
9 that -- well I'm wondering if an objective
10 consideration was that Rocket Coin had already
11 backed out of a prior term sheet?

12 A. That was not a consideration only
13 because their revised term sheet qualified. So thus
14 I was not concerned about that because they did
15 qualify any buyer can always walk away. It's a
16 normal course of running any MNA process whether
17 you're a buyer or a seller. Thus Rocket Coin was
18 treated like anybody else who had proof of funds.

19 We also didn't have a -- we would want
20 to encourage Rocket Coin to be at the table and we
21 did heartedly because we were trying -- we were
22 going to auction. We want as many parties as
23 possible so that we have as much competition as
24 possible in order to get the highest price for the
25 estate.

1 Q. Because that bids up the price, right?

2 A. More people bidding for the asset the
3 likelihood of having a higher price increases.

4 Q. Makes sense.

5 A. Simple supply and demand economics.

6 Q. Took the words right out of my mouth.

7 Let's turn to Tab 25 and we'll mark that as 18?

8 (Exhibit 18 marked.)

9 BY MR. KISSNER:

10 Q. Do you recognize this document?

11 A. I do.

12 Q. What is it?

13 A. This is Philosophy two.

14 Q. Can you describe it?

15 A. Many can you expand on how you would
16 like me to describe it.

17 Q. Just in your own words just tell me what
18 this document is beyond Philosophy two?

19 A. This was Philosophy two to be basically
20 a new term sheet in an attempt to be a plan sponsor.

21 Q. You see where it says on page 2 if you
22 go down do you see where it says plan sponsor in
23 bold on the left and you see the column to the right
24 beginning newly formed acquisition vehicle.

25 A. Where do I see that?

1 Q. Right next to plan sponsor, it says a
2 newly formed?

3 A. By DigitalImpact, which was Philosophy
4 two.

5 Q. I was going to say. Do you understand
6 Digitalimpact holdings, that's Philosophy?

7 A. Yeah. DigitalImpact Holdings, is
8 Philosophy two.

9 Q. This was a plan sponsorship term sheet
10 right?

11 A. It was.

12 Q. When did you receive this?

13 A. My recollection -- I don't recall the
14 date. I do recall that it was potentially after the
15 deadline for term sheets to be submitted.

16 Q. Could you look at the stamp at the top?
17 Does that refresh your recollection?

18 A. Okay. This is 6/1. There was multiple
19 versions.

20 Q. I understand. I was copied on some of
21 the e-mails.

22 A. This was the original, this was the 6/1
23 version.

24 Q. This was a plan sponsorship transaction
25 right?

1 A. Uh-huh.

2 Q. And the auction was on June 2nd?

3 A. Correct.

4 Q. So at least as of June 1st, the company
5 was still soliciting interest in a plan sponsorship
6 transaction?

7 A. We have as I've repeatedly said, we
8 are -- we were open to any type of arrangement.

9 Q. Okay. Does this set forth a recovery
10 for Enigma?

11 A. No.

12 Q. Could you turn to page 6 of the
13 document?

14 A. It does have on the front page it has
15 \$6 million of kick back paper I don't know if
16 there's actually specific recovery for Enigma.

17 Q. On page 6?

18 A. Yes for Genesis and Enigma \$6 million of
19 take-back paper.

20 Q. And take-back paper is new debt, right?

21 A. In the reorganized company.

22 Q. And then turning back to page 2, do you
23 see where it says base purchase price.

24 A. Uh-huh.

25 Q. So this says the purchase price

1 consisted of some amount of cash plus kick back
2 paper fair?

3 A. It does.

4 Q. And I think before we were talking about
5 how a cash component, that would be for lack of a
6 better word run through the waterfall and whoever's
7 entitled to it gets it?

8 A. Yes.

9 Q. Would you agree that is also the case
10 with this proposal?

11 A. Sure.

12 Q. Did you view this as a qualified bid?

13 A. And remember, I'm talking about gross,
14 not net proceeds. Different.

15 Q. How do those?

16 A. Net has deductions for surcharges, other
17 things that could potentially come out of it that
18 are away from -- you know, gross and net are two
19 different things. That's not the way that we run an
20 auction. We run on a gross basis. So the waterfall
21 could different than directly down the waterfall
22 just to be clear.

23 Q. Sure. I think -- would it be fair to
24 say that some of the deductions from the waterfall
25 are what you're talking about there?

1 A. Yes. There might be other deductions,
2 yes.

3 Q. So he is sort of sit at the top?

4 A. Correct.

5 Q. Did you view this as a qualified bid?

6 A. We needed special approval to get from
7 all creditors as you remember including any
8 consultation parties to make this -- to have this
9 put in place. The original bid, remember, was
10 allowed sort of into the fold to create as many
11 buyers as we could, but remember the consultation
12 parties made an exception to that rule only on the
13 basis that because we were still waiting on proof of
14 funds.

15 Number two, is so eventually yes, they
16 were in the room, they provided proof of funds but
17 not on day one of the bid procedures.

18 Q. Do you see where on this page it says
19 purchase price deposit. Can you read that to
20 yourself.

21 A. Uh-huh.

22 Q. Let me know when you're done.

23 A. Yep, I read it.

24 Q. So this contemplated that at the end of
25 the auction Philosophy would deposit \$980,000 into a

1 bank account?

2 A. Which again was against the bid
3 procedures.

4 Q. Okay. But that's what this contemplates
5 at least?

6 A. It does.

7 Q. At the time of the auction, had you
8 received proof of funds with respect to the
9 \$980,000?

10 A. I don't recall at the exact moment in
11 time.

12 Q. Okay.

13 A. And, again, the proof of funds was a
14 bank account.

15 Q. Yep. A screenshot of a bank account.
16 Anybody could make that.

17 A. Which as we know is trying to create
18 demand but is sort of -- you have to think about
19 that in again the mosaic of how to determine winning
20 bidders.

21 Q. But you gave them a seat at the table at
22 the auction; they were allowed to participate?

23 A. We did.

24 Q. Did you ever have any intention of
25 pursuing a transaction with Philosophy?

1 A. Of course. We had intentions of
2 pursuing with each party equally.

3 Q. So at the time of the auction, you had
4 an intention of pursuing a plan sponsorship
5 transaction with Philosophy provided that they were
6 the winning bidder?

7 A. We had the same intention with every
8 party.

9 Q. Okay. And that intention was if you won
10 the auction you'd move forward with the transaction
11 that was selected?

12 A. Correct.

13 Q. So we were talking before about how
14 Rocket Coin was the stalking horse, right?

15 A. They were.

16 Q. Do you think the process benefited from
17 having a stalking horse?

18 A. We did that's why we had a stalking
19 horse in place.

20 Q. How do you think the sale process
21 benefited from having a stalking horse in place?

22 A. Because no matter what happens we have a
23 bidder.

24 Q. Do you think the estate benefited from
25 having Rocket Coin serve as stalking horse?

1 A. We did.

2 Q. And why is that?

3 A. Same reason.

4 Q. Do you think that Enigma benefited from
5 Rocket Coin serving as the stalking horse?

6 A. I didn't look at Enigma as an individual
7 creditor. I'd look at it as fiduciary
8 responsibility to the estate and each creditor
9 within the estate, not as Enigma in general. I
10 think in general having a stalking horse that
11 creates the highest price benefits the estate and
12 all creditors.

13 Q. Sitting here today, do you think that
14 Enigma benefited from Rocket Coin serving as
15 stalking horse?

16 MR. MANN: Objection to form.

17 THE WITNESS: Again, my answer would be
18 the same.

19 BY MR. KISSNER:

20 Q. Do you know what a break-up fee is?

21 A. I do know what a break-up fee is.

22 Q. Can you explain it to me?

23 A. Break-up fee is the amount of money a
24 stalking horse receives if someone else basically
25 overbids their initial stalking horse bid and they

1 end up not being the winner of the auction.

2 Q. Was Rocket Coin entitled to a break-up
3 fee under its APA?

4 A. They were.

5 Q. Do you recall how much it was?

6 A. It was three percent of the purchase
7 price plus 150,000 of expenses. If I remember
8 correctly it's 186,000 plus 150 add those two
9 numbers together and you get to their stalking horse
10 fee -- or break-up fee.

11 Q. So 336; does that sound right?

12 A. Sounds right.

13 Q. Do you know if the debtor in fact paid
14 Rocket Coin a break-up fee?

15 A. We did.

16 Q. Do you know how much it paid on account
17 of the break-up fee?

18 A. I did not execute that transaction.

19 Q. Was there a reduction in the break-up
20 fee paid? I just don't recall.

21 A. I don't recall either. I don't think
22 so, but I don't recall.

23 Q. Do you recall that there was a dispute
24 over the break-up fee?

25 A. Briefly but I don't recall the details

1 it was handled by counsel.

2 Q. Do you recall anything about it?

3 A. There was a small dispute.

4 Q. Do you know what it was about at all?

5 MR. MANN: Objection to form.

6 THE WITNESS: I don't recall the details

7 of it, so. I'm not the best person to ask on that

8 particular topic.

9 BY MR. KISSNER:

10 Q. All right. Are you aware of any
11 litigation being filed with respect to that dispute?

12 A. There was definitely -- there was talk
13 of litigation. I just don't know -- I don't recall
14 the end of the process of the steps in the process
15 to get there. It was resolved.

16 Q. It was resolved?

17 A. That was my understanding.

18 Q. And as presumably as part of that
19 resolution a break-up fee got paid?

20 A. Correct.

21 Q. Do you think if Enigma benefited from
22 the payment of a breakup fee to Rocket Coin?

23 A. I think the debtor engaged in
24 contractual terms.

25 Q. But do you think Enigma received a

1 benefit?

2 MR. MANN: Objection to form.

3 THE WITNESS: I don't know why that's
4 relevant I don't even know even how to characterize
5 something that has nothing to do with Enigma.

6 BY MR. KISSNER:

7 Q. So you think a break-up fee had nothing
8 to do with Enigma?

9 A. I think that at the end of the day is a
10 stalking horse was set the floor of the auction, in
11 every almost every stalking horse bid generally has
12 a break-up fee attached to it. If the stalking
13 horse is a benefit to the estate and all creditors
14 and a break-up fee is part of that, then it benefits
15 all creditors. If you'd like to single out Enigma
16 yourself, you can, but that's the way I look at it.

17 Q. Okay. But you think the estate as a
18 whole benefited from the payment of the break-up
19 fee?

20 A. I think the estate as a whole benefits
21 as a stalking horse bid.

22 Q. And part of the price of having the
23 stalking horse is you've got to pay the break-up
24 fee?

25 A. That is correct.

1 Q. Okay. All right. Let's talk a little
2 bit about the auction if that's okay?

3 A. Sure.

4 Q. It wasn't my favorite night either
5 that's fine. Let's turn to Tab 41 we'll mark this
6 as Exhibit 19?

7 (Exhibit 19 marked.).

8 BY MR. KISSNER:

9 Q. Do you recognize this document?

10 A. I do.

11 Q. What is it?

12 A. My recollection this is -- this is
13 Tanner giving you a heads up on who we're picking as
14 the first bid at the auction.

15 Q. Sorry.

16 A. At the auction.

17 Q. And this lists I think four bids there?

18 A. There were.

19 Q. And one of the bids was Heller Capital
20 and Genesis Coin and that was who we were discussing
21 earlier, right?

22 A. They were.

23 Q. And then another one is Rocket Coin that
24 was the stalking horse. And then another one was
25 digital impact holdings and that's Philosophy two?

1 A. Correct.

2 Q. Okay. I also see Chris McAlary's name
3 here?

4 A. That's correct but he was bidding on
5 more Brazil and litigation assets than he was on the
6 company itself. Although there was a informal
7 apparently agreement or conversations happening
8 between Chris McAlary and digital imaging.

9 Q. Interesting. Do you know anything about
10 the substance of those communications?

11 A. I do not.

12 Q. When did you learn about those
13 communications?

14 A. Sometime during the process prior to the
15 auction. But there was no formal agreement so we
16 treated them as separate.

17 Q. Do you know anybody at Province who
18 would know more about those communications?

19 A. I do not. We weren't involved. Chris
20 was there doing diligence for them so that Chris as
21 CEO of the company was providing conversations about
22 the company.

23 Q. Was Province okay with that or --

24 A. Yeah. I mean it's -- again the more
25 information that helps the buyer get to a higher

1 price whether it was from the CEO, CFO, Province, we
2 encouraged. Diligence was a big deal here given the
3 operational disarray the company was in.

4 Q. You said Chris was bidding on Brazil and
5 litigation assets, right?

6 A. That's correct.

7 Q. And the litigation assets I think is
8 subject to a current ongoing dispute right are you
9 aware of that?

10 A. Dispute?

11 Q. Yeah I think there's a dispute in the
12 bankruptcy court about it you're not here to testify
13 about it I just want to make sure I'm correct.

14 MR. MANN: Objection to form.

15 THE WITNESS: Just continue on.

16 BY MR. KISSNER:

17 Q. I mean he wanted to buy some litigation
18 claims is that the idea?

19 A. He wanted to buy Brazil and some
20 litigation claims.

21 Q. Do you know what litigation claims those
22 were?

23 MR. MANN: Objection to form.

24 THE WITNESS: It was the Bitcoin depot
25 at the time Cole Krepo was not offered at the

1 auction.

2 BY MR. KISSNER:

3 Q. And Bitcoin Depot that was bid access
4 that whole dispute?

5 A. There are two litigations within it,
6 yeah.

7 Q. But it related to them turning off the
8 machines?

9 A. On the bid access side, yeah.

10 Q. And then so that's fine, litigation
11 claims.

12 You also said Brazil can you elaborate
13 on what that meant or means?

14 A. They have a subsidiary called Brazil,
15 Brazil was -- was at the time still the subject of
16 major diligence by us in terms of understanding it.
17 It's a very -- it's a very difficult asset to
18 diligence for anybody because of its location
19 because of the conditions that were put around it
20 where there's power of attorney away from the
21 company. So and but there was cash down there, and
22 there was assets down there. So as a representative
23 of the estate, you know, we would love to have -- we
24 would love to sell that asset but we were doing our
25 work to try to make sure we were maximizing value.

1 Q. And the debtor owned the equity in the
2 Brazilian subsidiary?

3 A. That's correct.

4 Q. If we just say Brazil we'll know we're
5 talking about the Coin Cloud Brazil subsidiary?

6 A. I am fine with that.

7 Q. You said there were some cash down there
8 and some other assets, right?

9 A. Yeah, cash and some DCM s.

10 Q. So some DMCs, that's what you meant by
11 other assets?

12 A. Correct.

13 MR. MANN: Objection to form.

14 BY MR. KISSNER:

15 Q. Do you have any sense of how many DCMs
16 are owned by Brazil?

17 A. I would say that originally it was
18 someplace around 20.

19 Q. Okay. And now?

20 A. I think -- I think they might have --
21 have additional that were shipped down there but I
22 don't know the exact number.

23 Q. Shipped down there by the debtor?

24 A. Uh-huh.

25 Q. So previously they were in control of

1 the debtor now they're in Brazil?

2 A. I think these were always predetermined
3 to go down there and I think if I remember correctly
4 they were paid for by Brazil. But I don't have that
5 information -- I wasn't prepared for that
6 information today.

7 Q. That's fair.

8 Do you know who at Province might know
9 about that or who at the company might know about
10 that?

11 A. I can offer I get back to you. I don't
12 have the person who knows about the intricacies of
13 Brazil.

14 Q. Is it fair to say then that the DCMs
15 owned by Brazil not part of this asset sale?

16 A. Correct.

17 Q. Did any of the other bidders express an
18 interest in buying Brazil or just Chris?

19 A. I think over time there's been many
20 iterations of these term sheets. I think, so in the
21 current term sheets you see there the answer is no.

22 Q. Okay. I'll take your word for it.

23 Were there any other bidders that
24 participated in the auction other than the four that
25 are listed in Exhibit 19?

1 A. Enigma.

2 Q. Okay. Anybody else?

3 A. No.

4 Q. Okay. Let's turn to Tab 42 which we'll
5 mark as 20?

6 (Exhibit * marked.) 20.

7 BY MR. KISSNER:

8 Q. Do you recognize this document?

9 A. Yes, this is the document that I didn't
10 see until post auction because I was in New York as
11 you were in London. But yes this was the terms of
12 the Enigma credit bid which was 2.6 million of
13 securities for 2200 machines.

14 Q. And you never saw this term sheet the
15 night of the auction?

16 A. I saw partially screenshot of it, but I
17 didn't see the actual physical term sheet.

18 Q. Was this bid accepted by the debtor?

19 A. Well, this bid was subject to in
20 conjunction with Rocket Coin's bid. So the way
21 Enigma went down was very simple and we have e-mail
22 correspondence if you'd like to review it, Andrew,
23 and you sent me an e-mail the night before on
24 June 1st, you Enigma said that we might we might be
25 credit bidding here we intend to we did not like the

1 choice of the Heller bid and the Genesis bid. Which
2 is really interesting because you didn't object to
3 the APA and the final sale but we'll leave that on
4 the record that that was already approved and you
5 did not object. So you guys then the next day
6 had -- we were willing to accept any and all bids.
7 We Rocket Coin came back with a revised offer, that
8 revised offer came to us and included Enigma.

9 You were very clear in an e-mail that
10 your bid was intended to be stapled to Rocket
11 Coin's, correct? And we accepted it and we
12 considered it and then Rocket Coin came in and
13 pulled out. They did not like that certain
14 employees were no longer at the firm and said this
15 violated something important in terms of running the
16 software so thus both bids kind of went away at that
17 particular moment in time.

18 Q. You seem pretty defensive about it.

19 A. Not defensive. Factual.

20 Q. Okay. So the reason why it wasn't
21 accepted is because you would say a fundamental
22 assumption of this bid didn't turn out to be true?

23 MR. MANN: Objection to form.

24 THE WITNESS: That's not what I would
25 say.

1 BY MR. KISSNER:

2 Q. What would you say?

3 A. I would say that your bid was stapled to
4 Rocket Coin and Rocket Coin withdrew their offer.
5 Simple.

6 Q. Sure. And this was a credit bid, right?

7 A. It was.

8 Q. If Enigma's credit bid had been
9 accepted, would Province had earned a transaction
10 fee on the sale?

11 MR. MANN: Objection to form.

12 THE WITNESS: We would not.

13 BY MR. KISSNER:

14 Q. Okay.

15 A. We did offer you the ability to credit
16 bid still we offered you and we offered Michael the
17 ability to credit bid.

18 Q. Who's Michael?

19 A. He's the CEO of.

20 Q. Michael Halimi?

21 A. Yes. And you turned us down.

22 Q. Okay.

23 A. So we have kept every option open
24 multiple times during this process.

25 Q. And who eventually won the auction?

1 A. The Heller Genesis combination.

2 Q. And why were they selected as the
3 winner?

4 A. Our view is they provided the best
5 outcome to the estate and all creditors.

6 Q. And before we were talking about this
7 idea of highest and best, do you remember that?

8 A. Uh-huh.

9 Q. Did you think that the Heller Genesis
10 copy joint bid was the highest and best?

11 A. It was.

12 Q. Why is that?

13 A. Number one is they had no diligence
14 outs. The company was in operational disarray. We
15 had massive operational problems. There was no
16 other party that did not have diligence outs.

17 Q. Anything else?

18 A. No. That was the largest on a
19 comparative basis that was a large consideration.

20 Number two at the time of picking Heller
21 at the end, we had no other bids that didn't have
22 any diligence outs. So a big condition here is the
23 operational disarray of the company and getting the
24 closing. And that came to fruition even more so
25 than it was before a week later when OptConnect

1 turned us off.

2 Q. Was one of the factors considered by the
3 debtor the likely closing timeline?

4 A. Sure.

5 Q. Was that a factor that was favorable for
6 Heller?

7 A. Heller had an easier close because they
8 didn't have the same diligence clause.

9 Q. Do you recall if you had an expectation
10 of about how long the Heller sale would take to
11 close at the time of the auction?

12 A. We did. But I don't remember the exact
13 time line.

14 Q. Was it more than a day?

15 A. It was more than a day, yes.

16 Q. More than a week?

17 A. I'm not going to opine anymore because I
18 have -- I don't recall.

19 Q. More than a day.

20 Less than a month?

21 A. I just don't recall, so.

22 Q. Less than a year?

23 MR. MANN: Objection to form.

24 BY MR. KISSNER:

25 Q. And what was the purchase price that was

1 paid by -- strike that.

2 We were talking before about how the
3 winning bid was a joint bid Heller and Genesis Coin
4 represented by the same people negotiated by the
5 same people we should consider them together, so how
6 much was that joint bid?

7 MR. MANN: Objection to form.

8 THE WITNESS: 5.7.

9 BY MR. KISSNER:

10 Q. Okay. Did that bid have an allocation
11 between various components?

12 A. It did.

13 Q. Could you describe that to me?

14 A. It was 2 million originally for the
15 software and the difference 3.7 I guess it is for
16 the assets.

17 Q. And then well you said originally it was
18 one thing. Presumably that means a change.

19 A. It did. We had a meeting with Enigma
20 and you were on that phone call where we gave you a
21 choice, Heller was going to buy all the assets and
22 the software irrespective of what Enigma would like
23 to do on a credit bid side, we gave you a very clear
24 choice of you're more than welcome to credit bid for
25 those assets and Heller will buy the rest and we'll

1 adjust a pro rata purchase price or you offer us --
2 -- or you decide that you like this bid. Your CEO
3 asked us for 500,000 from allocation away from the
4 software to the assets. We told you that we can't
5 do that, but we will take it back to the client, to
6 the buyer and you asked for a discussion with him.
7 You had that discussion. He went and said he'd
8 consider it. And he made a decision based on your
9 conversation to do that allocation.

10 Q. When you say "he," you're referring to
11 whom?

12 A. George and his representatives.

13 Q. And George was the principal at Heller?

14 A. Heller and Genesis the person who was
15 the third party we were negotiating with.

16 Q. And was that conversation with George,
17 was that between Michael and George or were you
18 involved in that?

19 A. I was just -- I was on the call myself
20 Zack Williams from Fox I was on the phone you were
21 on the phone Michael was on the phone, George was on
22 the phone I don't know of any other party because I
23 couldn't see the screen based on being on my phone
24 but those were generally the conversations and those
25 conversations went between Michael and George.

1 Q. And you were a fly on the wall?

2 A. As were you.

3 Q. Do you know how long it eventually took
4 for the Heller sale to close?

5 A. Final close date on the Heller sale was
6 July 21st.

7 Q. And the auction was June 2nd?

8 A. Correct.

9 Q. So a month and a half?

10 A. Absolutely.

11 Q. Do you think that was more or less than
12 what your expectation had been at the time, if you
13 can recall?

14 A. I think it was more than the
15 expectation. The Heller offered to pay us 250,000
16 for the estate for the negative operating expenses
17 that it would cost us to keep -- to close later. So
18 they actually paid consideration for an extension of
19 the timeline because we had to keep certain things
20 up and running that we would normally have shut down
21 by that point to save the estate money.

22 Q. And that increase in consideration that
23 went to fund ongoing expenses of the debtor?

24 A. Correct.

25 Q. Administrative expenses maybe we could

1 call them?

2 A. I would call them operational expenses.

3 Q. But not payments to creditors?

4 A. No payments to creditors, no payments to
5 advisors it was literally just pay roll things that
6 they needed done.

7 Q. And you said that incremental
8 consideration was 250,000?

9 A. 75,000 upfront and a 175,000 at the day
10 of close as you can reference in the APA.

11 Q. And so after accounting for that, the
12 top line consideration would have been
13 \$5.95 million?

14 A. If you add the 250 to the 5.7.

15 Q. Do you know how much was actually paid
16 by Heller at close?

17 A. There was a ten purse reduction in the
18 purchase price.

19 Q. So less than 5.7 plus?

20 A. Correct.

21 Q. Okay. Do you have an understanding as
22 to why that happened?

23 A. I do.

24 Q. Can you describe it?

25 A. There was a clause in the APA that

1 basically said that in correct me if you have it in
2 front of you and I don't that if five percent of the
3 machines were not found in the warehouse or ten
4 percent were damaged, then they would have a ten
5 percent reduction in purchase price.

6 Q. Do you think that Heller was entitled to
7 reduce the purchase price?

8 A. I did not perform the analysis on the
9 reduction in purchase price.

10 Q. Do you know who did if anybody?

11 A. It was the Fox team and I'm sure
12 Province too.

13 Q. Do you know who at Province would know
14 more about this?

15 A. My guess, Tanner, Tanner James.

16 Q. Shame that we did this today I could
17 have asked him about it. Okay.

18 So they were entitled your understanding
19 or recollection is that Heller was entitled to
20 reduce the purchase price if a certain percentage of
21 machines were damaged, right?

22 A. Either damaged or not in the warehouse.

23 Q. Could we go to Tab 43 and we'll mark
24 that as 21.

25 (Exhibit * marked.)

1 BY MR. KISSNER:

2 Q. And this one -- this is the electronic
3 Danny, on the laptop.

4 So we have Tab 43 Exhibit 21 do you
5 recognize this document, Mr. Moses.

6 A. I have seen this e-mail.

7 Q. Could you describe it to me.

8 A. This is the initial or maybe the
9 forwarded e-mail that initially went from Heller to
10 Fox Rothschild that was forwarded out to the
11 consultation parties if I remember correctly and I
12 was cc'd on it not directly sent.

13 Q. But you've seen it before?

14 A. I have seen this e-mail yes.

15 Q. Can you turn to page 2 of the e-mail and
16 you do see the paragraph that starts with the word
17 given it's third from the bottom?

18 A. I do.

19 Q. Could you just read those two sentences
20 for me?

21 A. Given that the number of DCMs in the
22 warehouse varies by more than 5 percent of those
23 identified on schedule 2.51 A, the ten percent
24 reduction of purchase price is applicable. Further,
25 even if we were to include the additional DCMs found

1 in this one warehouse, over ten percent of DCMs are
2 not in working condition.

3 Q. So do you understand that mean that
4 Heller was alleging that more than ten percent of
5 the purchased DCMs were not in working condition?

6 A. Heller is alleging that they have
7 satisfied the clause that allows them to have a ten
8 percent purchase price.

9 Q. Okay. And you said that Mr. James would
10 have been the one who analyzed that at Province?

11 A. It was likely them and Fox. Fox
12 Rothschild.

13 Q. Okay.

14 A. I do not -- I have not looked at
15 schedule 2.1.

16 Q. Okay. Why don't we look at the
17 attachment to Tab 43 which is the excel up in front
18 of you which I don't know if we need to mark this
19 separately. So we'll make this Exhibit 22 and it
20 was produced in native format and I think everybody
21 on the zoom should have a copy, but if not feel free
22 to reach out 22.

23 A. I am ready.

24 Q. Do you recognize this document?

25 A. I have not looked at this spreadsheet

1 before.

2 Q. Do you understand this to be the
3 spreadsheet that was attached to the e-mail that we
4 were just reviewing?

5 A. I did not look at the spreadsheet
6 attached to the e-mail so I do not have any
7 knowledge of this spreadsheet.

8 Q. Do you have any reason to believe this
9 wasn't the spreadsheet attached to the e-mail we
10 were just look at?

11 A. I don't have no reason to believe or not
12 believe.

13 Q. Would you rely on my representation that
14 it is the spreadsheet attached to this e-mail even
15 if you don't have actual knowledge?

16 A. I will not -- I will reserve -- I would
17 reserve all rights.

18 Q. Is there somebody at Province that you
19 think would probably know about this spreadsheet?

20 A. I don't know who actually prepared it.

21 Q. Okay.

22 A. There could be -- there were probably
23 other people in Province who knows about this but I
24 don't know who was the actual preparer personally.
25 I just don't want to assume.

1 Q. That's fair. Do you think Mr. James
2 might know more about this spreadsheet I'm sorry if
3 I asked that before?

4 A. You've asked that before.

5 Q. But he might?

6 A. I am not going to opine, but my guess is
7 there is another person in Province who helped Fox
8 prepare this spreadsheet.

9 Q. Who helped Fox or --

10 A. I don't actually know where this
11 spreadsheet came from like I said I've never seen
12 this before. I don't know if it came from Province
13 I don't know if it came from Heller. I don't know
14 anything about this, so there's not -- I can't be of
15 any service for you on this spreadsheet.

16 Q. On Exhibit 21 that e-mail, do you see
17 that there's a list like a numbered list do you see
18 the sentence above it that's started with we have?

19 A. Will you explain where you're looking?

20 MR. MANN: (Indicating).

21 THE WITNESS: Okay.

22 BY MR. KISSNER:

23 Q. Does that refresh your recollection as
24 to who created this spreadsheet?

25 A. My assumption is that we have attached

1 but I don't know where the original core base of
2 this spreadsheet came from. But my assumption is
3 usually a we in a statement means it came from
4 whoever sent the e-mail.

5 Q. And the person who sent it was from
6 Heller or on behalf of Heller?

7 A. It was.

8 Q. Okay. Let's take a quick.

9 A. In this particular case it was forwarded
10 from Zack.

11 Q. Okay. Understood. Let's take a quick
12 break and go off the record let me just make sure we
13 have everything we need and then we can go on the
14 record and hopefully all go home.

15 (A recess is taken.)

16 MR. KISSNER: Back on the record.

17 Thanks Mr. Moses I think that's all the questions
18 that I have for you today. As we discussed off the
19 record there were a few topics that you do not have
20 knowledge of specifically pertaining to DCMs in
21 Brazil and then the Heller spreadsheet that under --
22 that related to the purchase price adjustment we're
23 going to meet and confer with your counsel and come
24 to a resolution on that.

25 And then I believe that debtor's counsel

1 had something to state on the record.

2 MR. MANN: Just that reserve our right
3 for errata when we get a copy of the transcript we
4 can review it and make any corrections that are
5 deemed necessary.

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UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

	170:4	16.75	49:9,14 61:2 66:6
<hr/>		155:17 157:2 166:10	193:18 195:5,6
\$	1.5	17	2023
\$15.5	175:10	66:6 172:7,8,15	14:8 17:16 71:6 75:5,6
153:1,4	1.9	175,000	78:10 79:21 80:3
\$16.75	76:5,7 78:23 80:9,10	203:9	82:13,17 104:24 105:2
157:21,24	81:4,7	18	120:23 121:6 122:3
\$18.5	10	34:9 76:2,3 178:7,8	132:16
151:15 152:20	11	18.5	21
\$2	11:22,25 55:25 56:2,3	151:21 152:25 157:1	49:14 126:19 204:24
175:11	70:21 123:7,17,20	158:2	205:4 208:16
\$3	127:16,17	1800	21st
152:4,11 153:1	12	159:10	124:22 125:22 202:6
\$3.5	127:14 128:16 134:12	186,000	22
166:23	135:9,12 149:4	186:8	206:19,22
\$5.7	162:10,13	19	2200
175:19	126	79:21 80:3 154:24	84:9 86:8,22 174:16
\$5.95	33:24 34:3	189:6,7 194:25	195:13
203:13	127	1st	23rd
\$500,000	35:12	105:14,25 128:13	132:11,18
36:9,20 176:11	12th	129:3 131:18,20	24
\$6	103:22 104:15	133:13 173:4 180:4	172:6,15
180:15,18	13	195:24	24th
\$7.75	137:14,15,16 140:8	<hr/>	87:14
166:14,23	13-week	2	25
\$74	19:3	2	178:7
144:13	14	13:4 22:23,24 23:14,	250
\$80	150:13	19,23 24:1 30:17,19	155:17 165:8 167:8
122:24	15	35:12,15 40:22 49:8	203:14
\$9	75:19 99:15,20,24	62:7,8 64:11 116:10	250,000
166:13	100:2 101:8 155:1,2	124:15 151:4 152:16	202:15 203:8
\$980,000	165:12	159:5 178:21 180:22	2500
182:25 183:9	15.8	200:14 205:15	159:10
<hr/>	145:23	2.1	25th
1	150	206:15	160:11,14
<hr/>	186:8	2.51	27
1	150,000	205:23	71:6 74:5,16 89:10,11
12:9,10,24 13:5 33:25	186:7	2.6	95:1,4
34:2 49:8,13 51:22	16	195:12	28
59:25 60:25 66:5	75:5,6 78:10 150:12	2.930	89:18
89:23 90:3 110:6	163:19,20 165:20	174:23	2B
1,000		20	24:14

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

2nd 14:8 82:13,17,22 84:4 86:19 134:5,18 180:2 202:7 <hr/> 3 <hr/> 3 29:25 30:1,16 31:6,9 33:1,23 36:2,8 60:25 66:4 124:16 129:4 132:5 3.7 174:22,24,25 175:10 200:15 30th 104:4,6,24 105:1,5 106:11,15 171:25 173:8 336 186:11 35 93:9 94:8 3500 84:9 86:10,23 159:8 174:16 36 89:2 363 33:4 35:18 42:17,21 43:2,3,13 44:12,19 45:21 47:25 48:4 55:4, 23 57:10 58:2,13,19, 23 60:11,17 62:12,17, 23 63:8 65:11 101:4, 17 104:19 108:10 117:10,12,16,18 124:5 127:6 134:1 155:13 173:13 174:6 392 71:5 123:13 <hr/> 4 <hr/> 4	31:19,20 35:11 51:18 52:3 60:23 128:2 135:10,14,15 4/21 160:10 4/7/23 71:7 125:1 4/723 60:3 40 50:20 41 189:5 42 195:4 43 204:23 205:4 206:17 44 163:18 45 108:15 48 12:6,13,14 99:11,25 132:2 135:16 483 76:13 <hr/> 5 <hr/> 5 50:21,22 120:2 205:22 5.7 200:8 203:14,19 5/12 170:18 50 93:9 94:9 120:3 500,000 35:19 201:3 51 95:17 124:16	530 134:14 5700 174:18,21 <hr/> 6 <hr/> 6 22:22 49:7,10 56:1,4 60:1 71:17 123:8,20 145:10 180:12,17 6/1 179:18,22 600 170:4 66 76:3 95:17 6th 110:10 119:16 121:3 <hr/> 7 <hr/> 7 29:23 71:11,16 89:12 95:1 149:3 714 75:3 95:8 730 79:22 75,000 203:9 770,000 174:22 7th 60:8,10 90:25 105:7 106:18,21 119:16 125:19 135:10,20 <hr/> 8 <hr/> 8 9:10 31:18 40:21 52:4 60:23 89:14,15,19,20, 22	8.162500 145:11 <hr/> 9 <hr/> 9 103:17 123:16 128:15 166:5 9.09 95:19,22 9.850 145:10,15 90 10:10 926 87:14 <hr/> A <hr/> ability 4:3 40:10 41:3,12 44:7 48:12 63:4,9 64:7 103:14 123:3 144:15, 19 157:7 197:15,17 absolutely 13:6 93:13 99:2 202:10 accelerate 122:9 accept 196:6 acceptable 53:14 accepted 195:18 196:11,21 197:9 access 101:1 122:12 192:3,9 accolades 148:1 accomplish 150:2
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UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

accomplished 149:24	advanced 105:18 106:4	agreed 30:22 42:3 73:21 76:14 86:12	176:15 181:1 185:23
account 116:8 154:7 176:25 183:1,14,15 186:16	advised 46:15,22 47:6,15 81:13,15	agreeing 73:10	amounts 66:9 79:16
accounting 203:11	advising 45:4 47:13 104:18 124:5 127:5	agreement 75:22 96:4,5,8,15,18 160:4,16,19,23 161:6, 16,19,24 162:3,12,18 190:7,15	an-as 174:5
accurate 63:11 94:2 129:13	advisor 8:2 11:23 12:1 17:19 18:2,10,23 19:1 20:11 37:25 38:24 45:16 46:4 48:7 68:18,25 97:6 131:6 157:12	ahead 18:18 54:24 70:2 76:1 82:21 109:12 173:20	analysis 14:14 19:7 88:14 170:3 177:5 204:8
accusing 147:11,16 177:7	advisor's 119:19	AKA 150:19	analyze 18:2
acquisition 178:24	advisors 11:13 38:3 39:11 203:5	alike 172:21	analyzed 206:10
act 20:11	advisory 6:11,14 7:3,9,12 8:5 11:16 17:23 18:7 19:16 20:15	alleging 206:4,6	Andrew 2:12 23:21 74:6 195:22
action 19:8	Aetherial 137:21,22,25 138:4 140:1 141:11,16 146:14,19 148:14,15 150:7 170:9 171:10,13	allocated 153:5	angry 147:23
acts 107:4	affect 4:3 48:12 85:17	allocation 79:15,17 200:10 201:3,9	announce 108:12 126:24
actual 88:18 121:24 130:2,8, 12 131:2,11 195:17 207:15,24	affirmative 3:19 17:11 140:2 143:10 168:9	allowed 182:10 183:22	answering 5:1
add 186:8 203:14	afternoon 97:18	alternative 132:25	anymore 199:17
additional 99:20 120:7 135:20,21 155:19 156:5 193:21 205:25	aggressive 149:19,20 150:4	ambiguity 35:21	APA 15:13 76:5,8 80:10 81:5 95:10,13 96:22, 24 162:22 163:3 168:24 186:3 196:3 203:10,25
additionally 72:9	agree 33:7 44:3 62:21 67:1 68:17 69:4 71:5 72:5, 14 75:2,9,23 76:17 77:24 93:16 104:5 116:1 157:22 166:11 181:9	amended 79:21 80:3,9	Apologies 51:19
address 41:7		amendment 32:6,13 80:6 165:1	apologize 12:3 93:15 121:11
adjust 201:1		amendments 80:20 81:1	apparently 104:24 190:7
adjustment 76:9 152:13 209:22		amount 7:17 21:16,17 22:4,12 27:2,11 28:19,24 29:5 30:21,22 85:15,16 118:15,20,21,25 119:7 149:25 150:1,5 153:15 154:11 158:5 170:5	appearing 12:23 24:21 88:6
Administrative 202:25			appears 12:21 23:4 30:12,14 31:4 32:5,12 52:5 60:8 109:3 111:6
advance 12:3			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

apples 165:16,24 166:21 170:7 applicable 205:24 apply 70:12 175:8 approach 82:7 83:4 102:13 approached 81:25 approval 56:17 125:15,23 182:6 approve 57:5 79:4,12 approved 34:17,24 91:15 110:19,22 136:10,14 196:4 approving 30:25 31:13 34:6,14 56:12,15 71:2 74:20 127:21 approximately 59:20 76:13 82:9 120:19 132:2 April 60:8,10 71:6 103:22 104:15 105:7 106:18, 21 110:10 119:16 120:23,24 121:3 122:6 124:22 125:19,22 135:10,20 160:14 170:16 area 7:1 20:2 argument 116:6 arrange 25:13 arrangement 21:3 71:24 180:8	arrangements 68:7 arranger 24:7,10,14,15,18,23 25:8 26:9 31:1 arranges 26:9 as-is 176:2 aspects 6:23 assessment 14:14 103:11 asset 29:12,21 33:4,6,12 35:18 36:9 44:19,21 69:19 75:21 81:22 91:4 102:25 160:16, 18,23 161:6,12,16,19, 24 162:3,11,18 164:22 175:9 178:2 192:17,24 194:15 assets 8:22 11:21,25 14:2,8 21:8 42:22 44:5 56:15 57:8 74:21 76:16 79:6, 12,14 82:25 86:8 90:17 92:21 94:9 98:25 99:19 100:11,25 107:22 110:23 117:16 124:13 142:2 165:4 172:20 174:3,4,6,7 190:5 191:5,7 192:22 193:8,11 200:16,21,25 201:4 assignment 6:23 74:24 assistance 129:23 assisted 98:24 99:3 assume 5:6 66:10 82:19 96:19 207:25	assumes 72:1 assumption 52:24 66:10 74:23 97:1 156:11 160:10 161:11,20 196:22 208:25 209:2 assure 4:11 ATM 172:20 attach 160:3 attached 53:10 95:11 160:5 188:12 207:3,6,9,14 208:25 attachment 164:19 206:17 attack 101:15 attempt 178:20 attempting 133:19 attention 13:24 90:22 attorney 70:10 192:20 auction 14:7 25:2 56:13 57:5 71:2 74:19 82:13,16, 22 83:15,22,24 84:4, 16 85:4,7 90:25 91:1 94:10 97:20 122:7 123:25 127:21 134:5, 8,18,24,25 135:3 172:1 173:20 176:7, 10,16 177:22 180:2 181:20 182:25 183:7, 22 184:3,10 186:1 188:10 189:2,14,16 190:15 192:1 194:24 195:10,15 197:25	199:11 202:7 authored 110:17 authorized 30:20 77:20 authorizing 74:23 Av 70:10 81:9 avoid 87:20 AVT 70:11,20 71:22,23,25 72:2,6,9,10,16 73:5,22 76:9,14,15,18,19 78:1, 5,6,18 79:5,6,10,11, 13,16 82:1 83:14 84:16,21,22 85:3,8,11, 17 87:4,6 90:7,12,19 91:1,10,16,25 92:4,6, 9,12,16,20 AVT's 78:10 81:9 82:15 83:25 84:6 88:9,10 AVTS 82:20 84:13 85:22 86:5,13,18 90:18 aware 32:3 38:5 39:10 41:11 58:8 78:8 79:18 80:2 116:19 187:10 191:9 awkward 36:7 Axelrod 164:15 Ayala 77:17 <hr/> B <hr/> back 4:12 8:13 12:5 25:7 40:21 45:10 49:7 52:1 60:23 65:8,19 66:4
--	--	--	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

73:3 83:21 97:16 98:20 101:14 106:19 111:20 113:7 121:7,9 123:6 135:8 152:16 155:12 162:12 167:5 168:5 169:17,19 180:15,22 181:1 194:11 196:7 201:5 209:16	based 15:5 32:8 49:5 55:16, 18 63:4 66:24 86:24 102:11 115:15 116:15, 23 129:24 137:5 141:4 153:12,17 201:8,23	beneath 132:11	57:5 71:3 84:4,8 123:25 178:2 190:4 191:4 195:25
backed 177:11	bases 92:5 121:24	benefit 91:16 188:1,13	bids 136:19 169:25 171:14, 19,20,22 178:1 189:17,19 196:6,16 198:21
backend 69:15	basically 56:24 94:8 104:12 108:6 115:12 120:3 121:20,21,23 131:16 133:5,7 135:6 141:24 164:13 166:24 173:13 174:5 176:6 178:19 185:24 204:1	benefited 184:16,21,24 185:4,14 187:21 188:18	big 191:2 198:22
background 6:3	basis 7:13 19:5 22:2 91:16 165:22 181:20 182:13 198:19	benefiting 33:5	binder 12:4 22:22 70:21 74:5 95:2 103:16 108:16 123:7 154:24
bad 135:2 162:19	Bate 33:24 34:3 35:12 51:20	benefits 185:11 188:14,20	binding 13:15
balances 122:22	bathroom 169:13	bid 15:16 42:2 51:2,8 54:15,21,22 55:3,14 56:7,10 57:9 58:2,12 59:23 60:5,7 63:18,21 64:1,3,10,12,18 65:15, 20 66:11 83:24 84:4 86:19,22 103:22 104:9,20 105:6,15 107:10 108:5,11 123:25 124:8 125:15, 17 126:1,6,13,18 127:8,11 136:7 137:5 148:17,22,25 149:1,7, 19 150:4 153:10,25 159:24 161:11 162:10, 13 164:22 165:2 168:5 169:24 170:16 173:22, 23 176:21 181:12 182:5,9,17 183:2 185:25 188:11,21 189:14 192:3,9 195:12,18,19,20 196:1,10,22 197:3,6,8, 16,17 198:10 200:3,6, 10,23,24 201:2	birthday 134:16
ballpark 45:2 135:24	Bay 49:3,21	Bitcoin 170:10,24 191:24 192:3	bit 6:2 17:12 41:18 47:23 65:10 77:24 83:22 106:25 114:9 117:2 123:9 140:12 141:9 142:11 169:24 189:2
bank 37:24 154:7 167:4 183:1,14,15	began 28:4 120:20	blocking 101:15	Bitcoin 170:10,24 191:24 192:3
banker 8:2 17:21 18:10,24 19:6 20:8,12 38:24 68:18	begin 114:3,5,12	blue 71:13,16 75:4	board 77:18
bankers 39:11	beginning 26:25 61:3 78:23 131:23 132:7,11 133:5 171:1 178:24	bold 132:7 178:23	books 86:9 129:15,17,24 130:5,10,13,17 131:6, 15
banking 6:17 7:2 11:12,17 17:23 19:16 20:15	begins 26:24 142:16	bidder 52:18 107:5,8,22 110:22 155:5 157:5 184:6,23	borrower 67:12,15
bankruptcies 153:11	behalf 9:6 14:10,18 32:10 77:21 91:20,24 141:11 174:10 209:6	bidders 105:3 137:5 183:20 194:17,23	borrowers 7:21 67:5,8
bankruptcy 7:7 42:21 44:18 69:18 124:2,7 153:8,17 191:12	bell 173:4	bidding 52:8,9 55:10,20 56:13	
base 6:18 111:3 138:11 152:17,19 154:3 180:23 209:1			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

bottom 71:14,18 116:11 132:5 159:6 205:17	177:1	capacity 6:20 8:5 46:5 120:7	205:12
bound 163:2,9,16	business 11:4 24:3 101:5 108:9 124:9 168:16,21 176:4,15	capital 8:17 14:16 43:10 70:10 74:21 75:24 81:20,25 83:6,13 84:3, 8 85:10,21 86:18,21, 24 87:4,6 96:8,16 132:24 144:14 149:25 150:1 173:1 189:19	CCOS 121:14,18
Brazil 190:5 191:4,19 192:12,14,15 193:4,5, 16 194:1,4,13,15,18 209:21	buy 85:16 101:4 159:2 191:17,19 200:21,25	Capital's 83:24 85:14	CEO 131:8 133:15 190:21 191:1 197:19 201:2
Brazilian 193:2	buyer 41:5,13 42:1 44:5 62:13 63:10 81:12,19 82:24 158:19 162:23 177:15,17 190:25 201:6	capitalized 65:19	CEOS 131:15
break 5:20,24 69:22 97:23, 24 98:5,6,7,9,11,14 117:2 169:12,19,21 209:12	buyer's 101:6	capped 36:14	CFO 191:1
break-up 185:20,21,23 186:2, 10,14,17,19,24 187:19 188:7,12,14,18,23	buyers 108:6 182:11	caption 89:25	chair 134:11
breaks 5:16	buying 146:2 174:3,4,6 194:18	captured 99:25	change 5:18 80:25 90:11 115:8,9,11,15 120:11, 14,20 200:18
breakup 187:22	<hr/> C <hr/>	carve 10:15	changed 57:23 80:10,21 120:15 121:5 122:2 154:14 171:6
Brett 164:11,15	calculate 116:14,16	case 6:24 21:3 63:8,25 64:23 65:1 84:23 104:14 115:16,24 118:25 131:24 133:4 181:9 209:9	Chapter 11:22,25
briefly 56:9 186:25	calculation 33:8	cash 2:15 16:23 19:3 23:7 77:19 91:20,25 93:1 98:2 109:4 120:4 121:22 122:17,20,22 144:23 151:16 152:12, 19 153:11,15 156:10 165:20,22 166:3,6,13, 17,19 175:5 176:11 181:1,5 192:21 193:7, 9	characteristics 116:25 117:14
bring 25:23 26:4	call 3:9 8:23 75:7 97:24 98:4 116:4 117:1,24 118:3,4,9,10 119:5 139:11 142:25 146:13 148:1 152:5,6,11 200:20 201:19 203:1,2	caveat 129:19 175:8	characterization 114:21 143:1
brought 82:6	called 2:18 8:16 9:14 192:14	caveats 151:19	characterize 80:23 111:13,18 113:20,25 142:4,7 143:16,20 144:6 157:9,15,17 188:4
buckets 156:19	calling 143:4	cc'd	characterized 70:20 88:9 114:18,20
budgets 19:4	calls 101:16 135:22		characterizing 102:23
bulk 7:15	cap 35:19 36:9,11,20 37:5, 11,20		chart 116:10 124:17
bullet 132:10			check 121:7 150:11
burned			choice 196:1 200:21,24

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

Chris 77:18 93:11 121:25 129:15,18,22 130:4, 13,17 131:8 133:15 190:2,8,19,20 191:4 194:18	4:11,14 16:20 29:5 35:3 42:8 74:22 136:12 170:6 181:22 196:9 200:23	164:13 166:24 167:9 169:6,24 170:9,13 171:9 174:11 176:4,17 177:1,10,17,20 184:14,25 185:5,14 186:2,14 187:22 189:20,23 193:5 196:7,12 197:4 200:3	20 120:6,12 121:4 129:15,18,23 130:5, 11,18 131:7 133:6,10, 13,16,24 134:4,19,25 135:3,5,7 144:23 155:23,24,25 156:2 169:5 180:4,21 190:6, 21,22 191:3 192:21 194:9 198:14,23
Chris's 2:11	client 58:6 68:14,17 136:11 163:15 201:5	Coin's 195:20 196:11	company's 65:18 66:24 120:25
chronologically 89:7	clients 9:6 104:19	Cole 83:2 191:25	comparative 198:19
Cica 2:9	close 103:4,14 157:8 162:23 176:4,21 199:7,11 202:4,5,17 203:10,16	collateral 63:25 64:4 82:18,23, 25 153:15	compare 165:17
circumstance 151:20	closed 85:10 91:15	colleagues 100:24	comparing 165:16 170:7
City 134:11	closer 9:18	collect 5:20	comparison 166:22
CKDL 48:24 50:13,15 51:10 52:17,20 54:13,16,18	closing 198:24 199:3	column 113:9 178:23	compensation 23:14 24:2 28:24
claim 64:14 72:21 78:5 81:14 91:2 92:4,12 116:8,12 118:20,21	cloud 2:15,16 11:19 16:23 23:7 37:21 38:2,19 39:12 69:6 77:19,20 91:20 93:2 96:9 98:2, 25 109:4 132:22 177:8 193:5	combination 198:1	compete 44:8
claims 74:22 191:18,20,21 192:11	Cloud's 14:2,8	comments 32:8	competition 177:23
clarification 32:7,15,18,19 90:19	clouds 91:25	committee 16:18,21,22 32:24 35:25 112:11,18	competitive 101:2 107:9,19 108:8
clarified 32:21	cobbed 154:18	common 42:25	complete 3:23 167:2
clarify 93:4	code 153:17	communications 84:22 105:2,6 190:10, 13,18	complicated 102:23
clarifying 35:20 136:15	coffee 77:5	companies 93:17	component 166:17 181:5
clarity 33:2,7,11 83:12 86:4 94:16	coin 2:16 11:19 14:2,8 23:7 37:21 38:2,19 39:12 54:15,16 69:5 74:21 77:20 81:20,21 96:9 98:25 132:22 155:8 156:17 158:21,22,24 159:2,23 160:15 163:9	company 18:3,4,21 19:2,5 21:16,18 25:24 26:12, 25 27:1,4,10,20 33:21 43:11 44:3,17 49:17, 20,25 50:3,5,8 59:19 62:3 64:1 66:10,14 67:14,15 69:17 86:9 93:25 117:17 119:18,	components 155:20 200:11
classified 83:1			concept 148:21
clause 199:8 203:25 206:7			concepts 43:20,23 44:16
clear			concern 133:7,9

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

concerned 176:3,17 177:14	103:2 117:5 144:13 145:5 151:6,22 155:20 166:14 177:10,12 198:19 202:18,22 203:8,12	contemplates 144:1 183:4	conversations 78:13,16 98:5,8,13 100:3,7,12,17 101:7,9, 12 138:7,14,16,20 139:8 190:7,21 201:24,25
concerns 33:4		contemplating 159:10	conversely 5:5 46:7
concert 97:6	considered 29:21 67:21 91:4 196:12 199:2	content 98:17 100:6 169:20	copied 179:20
concise 4:11	consist 152:25	contents 81:4 88:13,18,21	copy 77:11,14 88:1 198:10 206:21 210:3
condition 198:22 206:2,5	consisted 181:1	context 7:9 24:18,24 50:1 72:4 164:8,9,11	core 209:1
conditions 162:13 176:21 192:19	consistent 143:24	contingency 68:10,12,14,17,23 69:6	corner 49:9,14 71:12 75:20 95:17 124:16 132:6
conduct 14:7 16:14 25:2,3	constituting 64:12	contingent 21:10,12 29:6 64:8	corners 41:10
conducted 14:7 48:21	construct 44:6	continue 77:6 89:16 108:24 122:8 176:18 191:15	corporate 7:6
confer 209:23	consultancy 6:18 7:13	continued 122:6	correct 3:10 13:22 21:14 26:14,20 29:9 31:16 35:23 36:1,22 38:21 40:18,19 42:16 46:23 47:16 48:16 49:24 53:5 54:14,20 55:9,17, 23,24 60:14 64:6,20 66:21 71:4 72:20 77:3, 4,8,9 82:5,19 86:13 90:10 92:25 96:25 97:8 98:3 101:13,19 102:25 106:1 111:8 112:19 113:23 117:20 118:13 119:9 122:17, 18 124:3 130:9 134:7 135:17 143:14 144:9 145:19,20 146:22 149:15 150:24 151:4 153:3 158:11 166:19, 20 168:3 173:9,20 174:13 175:20 180:3 182:4 184:12 187:20 188:25 190:1,4 191:6,
confirm 79:25	consultation 48:23 112:12,13,16, 17,22 113:3 136:12,14 164:12 182:8,11 205:11	continuously 121:17,25	
confirmation 56:18	consulted 48:22	contracts 74:25	
confirming 74:19	consummate 123:3	contractual 187:24	
confused 126:12 161:14 168:6	consummated 26:3	contrary 91:25	
confusion 67:17	consummation 33:3	contrast 115:10	
conjunction 170:10,23,24 174:4,12 175:14 195:20	contact 85:8	control 193:25	
connection 42:5 46:23 64:9 104:19 127:6	contacted 39:4 40:4 84:16,21 85:3 135:16,19,21	conversation 4:8,18 37:16 78:21 81:11,18 82:6 85:18 100:8,20 102:14 138:3,24 139:10,17, 21,23 140:11,17,20,24 141:5,6 146:3,17,18 147:3,7,20 148:8,9 201:9,16	
consent 79:5,10,11 81:10 84:17 85:4	contemplate 55:20 166:18		
consequence 122:20	contemplated 57:9 182:24		
consideration 22:12 28:19 29:6 64:2			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

<p>13 193:3,12 194:16 196:11 202:8,24 203:20 204:1</p> <p>corrections 210:4</p> <p>correctly 65:19 99:14 121:21,22 122:17 128:13 186:8 194:3 205:11</p> <p>correlate 152:18</p> <p>correspondence 195:22</p> <p>cost 202:17</p> <p>costs 151:17 152:23 156:11 157:24 158:2</p> <p>counsel 5:10 17:4 53:3 77:3,8 78:9 95:12 161:1 163:16 164:17 187:1 209:23,25</p> <p>counterparties 177:4</p> <p>counterparty 22:18 28:21 29:1 40:15</p> <p>country 93:10,18</p> <p>couple 4:7 17:9,10 100:24 137:7 138:21 169:14</p> <p>court 4:6,23 29:24 30:25 31:13,19 42:22 89:11 91:3 107:21 124:3,7 125:18 127:15 154:25 155:7 160:8 165:18 172:7 191:12</p> <p>cover 110:7 111:21</p> <p>covered</p>	<p>167:8</p> <p>create 107:9 129:8 131:16 182:10 183:17</p> <p>created 110:4,12 129:10,16 131:3,17,22 132:15,17 154:17 208:24</p> <p>creates 185:11</p> <p>creating 108:7</p> <p>credit 8:8 9:25 10:6,8,10,12, 15,17,18 48:24 50:15 52:17 63:18,21 64:10, 12,18 65:15,19 66:11 195:12,25 197:6,8,15, 17 200:23,24</p> <p>creditor 6:11,14 47:19 48:3,6 72:2,17,21,25 73:5,23 78:6 81:15 90:13,20 91:2,5 92:5,6,13,20,21 117:5 145:12 153:14 185:7,8</p> <p>creditor's 16:17,21</p> <p>creditors 7:21 16:22 19:11 47:15 48:8 59:8,11 90:9 102:8,9,18 113:21 157:18 182:7 185:12 188:13,15 198:5 203:3,4</p> <p>creek 8:16,20,21 10:19,23 11:1</p> <p>criminal 147:12,17</p> <p>critical 156:1,12 157:25</p> <p>CRO 8:2</p>	<p>crossover 11:16 20:24</p> <p>cure 56:18 151:17 152:22 153:1 156:3,10 157:24 158:2</p> <p>curious 106:3</p> <p>currency 14:15</p> <p>current 6:5,8 34:2 122:22 191:8 194:21</p> <p>cut 70:25 117:15</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily 19:5 59:2</p> <p>damaged 204:4,21,22</p> <p>dangerously 176:11</p> <p>Daniel 3:5</p> <p>Danny 77:17 205:3</p> <p>date 27:4,21 72:5,15 76:17 90:25 104:15 110:3,8 120:21 121:7 122:7 124:21,23 126:15,20 131:24 160:9 161:21 179:14 202:5</p> <p>dated 135:9 173:3</p> <p>dates 117:1,24 121:10</p> <p>Dawn 2:8,9</p> <p>day 48:17 130:20 131:14</p>	<p>137:23 176:9 182:17 188:9 196:5 199:14, 15,19 203:9</p> <p>day-to-day 6:20</p> <p>dba 77:20</p> <p>DCM 121:24 193:9</p> <p>DCMS 71:23 72:10 76:13,15, 19 78:2 79:6,11,13,16 82:15,20,21 83:25 84:5,6,13,18 85:11 86:13,18 92:25 93:17 94:5 122:13 156:2 174:15,16,18,21 175:10 193:15 194:14 205:21,25 206:1,5 209:20</p> <p>deadline 103:22 104:10,20 108:5,12 124:19 125:21 170:16 179:15</p> <p>deadlines 55:11</p> <p>deal 191:2</p> <p>debt 27:3,9,20 64:1,2,4,5 65:21,25 66:15,21 117:6,7 118:2 120:7 132:24 158:5 180:20</p> <p>debtor 2:17 8:1 11:23 12:1 13:11,16,21 14:10,18 15:10,22 16:3 17:13, 19,21 30:20,23 38:10 39:15,18,24 40:5 42:3 44:2,10,12 45:4 46:15 47:7 48:19 52:17 53:4, 12 55:12,21 57:1 58:12,19 59:5 64:13 67:11,14 70:20 72:1,6, 15 76:13,15,18,22</p>
---	---	--	---

Dan Moses

In re: Cash Cloud Inc.

77:10,13,16 78:2,9 79:4,9 82:20 83:3 84:16,21 85:3 91:10, 20,24 93:5,16 94:8 96:16 97:11 101:24 105:2 113:21 125:23, 25 126:5,23 139:9 147:16 148:16 160:15 164:17 166:19 169:25 171:22 186:13 187:23 193:1,23 194:1 195:18 199:3 202:23	deductions 181:16,24 182:1	51:6 54:7 56:9,20 104:8 115:5 119:14 121:19 137:20 138:7, 13 157:20 178:14,16 200:13 203:24 205:7	Digitalimpact 179:3,6,7
debtor's 11:21,25 13:19 47:24 48:7 56:12,15 57:7 73:22 74:21,24 77:3,8 84:5 87:9 90:11 92:24 94:4 95:12 107:22 110:22 124:13 127:21 142:2 161:1 165:4 175:16 209:25	deemed 210:5	describing 100:18 101:15	digs 19:2
debtors 6:15 7:21 46:22 47:14 67:4,8 125:14 160:21	deeply 19:2	description 18:6	diligence 82:24 101:2 103:4 157:7 176:5,18,19 190:20 191:2 192:16, 18 198:13,16,22 199:8
decelerate 122:8	defensive 196:18,19	designated 124:19	dilligence 176:2
December 7:18	define 26:6 34:8 85:25	details 138:12 139:1 186:25 187:6	DIP 15:13 24:11 25:8,14 49:2 50:14,16 51:10 53:9,18 57:24 99:18 102:2 110:19 112:14, 16 133:4 170:25
decide 201:2	defined 34:10	deteriorating 176:6	direct 58:11,18 84:22 85:8 151:9
decided 176:17	definition 32:22,24 46:20 96:6	determination 158:7	directed 48:19
decision 58:2,23 63:13,15 64:22,25 201:8	definitionally 77:17	determine 56:25 183:19	direction 52:11
decisions 66:24	demand 178:5 183:18	developed 141:14	directly 167:22 181:21 205:12
declaration 72:4 75:13,18 89:3 93:12,22,24 127:20 128:12,25 132:1 135:8,9	denying 92:16	differ 18:22 114:10	director 9:21,23 77:18
deduct 152:22	depend 22:4,17 63:9 160:25	differed 60:17	directors 6:16
	depended 28:20,25 41:4	difference 15:3 18:9,14,16 65:11 67:11 114:4,17 115:23 200:15	disagree 78:18 116:1 126:4
	dependent 40:14 41:12	differences 4:7 47:24	disappeared 168:8
	depending 153:14	differentiate 82:20	disarray 191:3 198:14,23
	depends 100:10 160:24	differentiated 86:25	disclaimer 129:25
	deposed 3:11	differently 77:24	disclosure 133:21
	deposit 182:19,25	difficult 192:17	discuss 53:13 85:21 101:17
	deposition 4:9,23 5:17 12:5 15:12 89:8	digital 14:15 189:25 190:8	
	depot 191:24 192:3		
	describe 17:24 21:5,24 23:22		

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

<p>143:4</p> <p>discussed 104:20 145:18 209:18</p> <p>discusses 40:23 143:4,8 144:1</p> <p>discussing 81:4 89:10 135:10 148:1 189:20</p> <p>discussion 51:25 65:7 81:6 82:10 83:13,16 87:3 142:17 143:5 146:14 201:6,7</p> <p>discussions 15:21 16:2,6,16 17:1 78:9 81:8 83:6 87:5 105:18,24 106:4,8 146:8 169:20</p> <p>dispute 53:20 54:1,4,7,12 73:4 79:19 91:10,14,24 186:23 187:3,11 191:8,10,11 192:4</p> <p>disputing 92:15</p> <p>distinct 117:13</p> <p>distinction 114:24 115:6,17 130:7 131:10</p> <p>distinctions 142:11</p> <p>distress 7:15</p> <p>distressed 8:22 10:17</p> <p>distributed 153:12</p> <p>DMCS 193:10</p> <p>document 12:17,18 15:17 23:1,2, 8 24:19,24 30:3,5,7,11 31:22,23 32:4,6 34:10,</p>	<p>19 36:19 41:11 51:1, 22 52:4,6 53:9 54:24 55:5 56:6,10 57:20 70:24 71:5,9,12,17 72:6,15 74:18 75:3,7, 19 76:2,18 77:1,22,24 78:1,4 79:20,22 80:3, 5,9 87:13,14,21,23 88:13 89:24 90:6 95:8, 13 103:19,25 104:5 109:14 110:4,12,15,17 111:1 113:21 123:9, 12,13,24 124:12,24 125:3,7 127:19,23 128:19,23 129:9,10, 13,14,16 131:9 132:15 137:18 140:7 150:16 155:4 163:22 164:4,20 172:16 178:10,18 180:13 189:9 195:8,9 205:5 206:24</p> <p>documents 6:3 15:13,18 80:20 102:3 131:11,12,16 137:13</p> <p>dollar 149:14</p> <p>dollars 27:2 122:23</p> <p>Don 138:5 147:25</p> <p>door 152:19</p> <p>draft 2:2 51:3,4 52:6,7,8,9, 21,22 54:21 55:8,14, 20 57:15 72:12 75:18 109:14 111:10 113:16 114:3,5,11,14,25 115:7,8,14 116:5,7 118:16 119:12,17 120:5,13 142:11,18, 21,23 159:21</p> <p>drafted 76:25 95:10,13 96:4, 15,19,22 97:2,5,10</p>	<p>110:15</p> <p>drafter 97:12</p> <p>drafting 75:10 96:23 97:8</p> <p>drafts 75:15 80:25 115:23</p> <p>drawing 115:18,21</p> <p>drugs 4:2</p> <p>due 26:24 82:24 172:1 176:2,5</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-mail 83:7 110:7 111:21 163:23,24 164:3,6,7,8 176:9 195:21,23 196:9 205:6,9,14,15 207:3,6, 9,14 208:16 209:4</p> <p>e-mails 179:21</p> <p>earlier 67:3 94:7 101:14 106:21 123:7 135:16 157:3 176:8 189:21</p> <p>early 109:8 111:10,19 114:3,14,25 115:7,8, 14,23 116:25 117:24 119:5,6,17 133:22 147:20 149:11 152:5</p> <p>earn 26:9,17 33:12 40:10 41:3,12 50:7 62:12,22 63:4,9 64:7,9,17 66:8</p> <p>earned 33:3 61:19 65:25 66:20 197:9</p> <p>ease 12:7</p>	<p>easier 199:7</p> <p>easy 137:15</p> <p>economics 178:5</p> <p>effective 27:4,21</p> <p>effectively 27:18 44:5 102:3 120:5 122:21 142:1,16 167:9</p> <p>elaborate 43:25 105:21 118:5 152:15 192:12</p> <p>electronic 205:2</p> <p>eligible 62:22</p> <p>emerges 44:17</p> <p>emotional 177:3</p> <p>emotions 177:8</p> <p>employ 38:10 93:5</p> <p>employed 6:7 8:12 11:9 21:6 39:15,18,24 93:1,17</p> <p>employees 16:3,25 176:20 196:14</p> <p>employer 6:6</p> <p>encompasses 7:18</p> <p>encourage 177:20</p> <p>encouraged 191:2</p> <p>encumbrances</p>
---	---	--	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

74:22	entitled 23:14 35:21 153:9,16 181:7 186:2 204:6,18, 19	154:19 182:15 197:25 202:3	137:15,16 140:8 150:13,14 155:1,2 163:19,20 164:2 165:12 172:7,8,15 178:8 189:6,7 194:25 195:6 204:25 205:4 206:19 208:16
end 23:19 65:19 121:3 169:25 182:24 186:1 187:14 188:9 198:21	entity 49:2,19	evoked 87:7	exhibits 77:11,15 79:20
ending 33:24 61:4	entry 56:12 71:2	exact 81:6 120:21 126:15,20 160:9 161:21 183:10 193:22 199:12	exist 78:14
engaged 38:23 48:14 67:4,7,8 187:23	environment 107:9 108:8	examination 12:22 70:4	existing 44:17,22 66:15
engagement 19:19 23:5,6,24 24:23 28:25 29:12 30:15 31:1,12,14 35:6 36:14 37:21 39:2 40:11 45:20 50:1 66:13 67:24 68:3 69:5 98:24 123:14	equal 105:13,16	examine 160:15	exit 27:7,8,12,13 28:12 61:9,11,16,18,24 62:4 63:3,5 69:17 132:23
engagements 7:11 20:5 45:3,17 67:23 68:5,7,10,11	equally 68:20 184:2	excel 206:17	expand 46:19 178:15
Enigma 2:13 58:1,5,6,11,18 90:7,18 112:14 116:8, 12,14,22 118:16,19, 20,25 136:11 145:5,12 151:25 152:3,10,14 174:1 180:10,16,18 185:4,6,9,14 187:21, 25 188:5,8,15 195:1, 12,21,24 196:8 200:19,22	equities 10:3,9	Excellent 50:19 70:9	expectation 199:9 202:12,15
Enigma's 82:21 197:8	equity 9:17 10:4,11 27:3,9,20 65:21,25 66:21 132:24 193:1	exception 182:12	expenses 90:23 186:7 202:16, 23,25 203:2
enter 124:25	errata 210:3	Excluding 66:9	experience 43:1,13 44:11 48:2,11 104:18 107:12 124:5 127:5 160:21 161:5 167:11
entered 60:3 83:24 160:15	establishing 55:10	execute 144:15,19 154:4 161:19 186:18	expert 20:15
enterprises 156:3	estate 33:5 48:9 102:8 151:23 165:21 177:25 184:24 185:8,9,11 188:13,17,20 192:23 198:5 202:16,21	executed 50:8 160:16,19,23 161:6,16,23 162:3,18, 22 168:24	experts 100:22
entire 76:22	estimate 93:7	executes 163:3	explain 27:15,23 41:23 42:20 43:8 53:7 63:23 117:25 119:14 151:13, 20 185:22 208:19
entities 90:8	Estimated 101:10	executive 129:5	explored 146:1
	evaluation 14:14 120:11	executory 74:24	express 100:15 194:17
	event 62:12	exhibit 12:9,10,24 13:5 22:23, 24 29:25 30:1 31:19, 20 49:8,13 50:21,22 51:19,22 56:1,4 60:1, 23 75:21 89:2,4,6,12, 14,15,18,19,20,22 95:1,11 103:17 108:17,18,24 123:8,20 127:16,17 128:16,17	extension
	eventual 105:6		
	eventually 125:9 133:25 136:3		

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

202:18	false 129:21 131:4	48:9 157:18 185:7	50:4,7 53:11,15 61:9, 11,16,18,25 62:4 63:3, 6 71:23,24 81:13 99:18 103:3 132:24,25 164:14 167:3,15,24 168:2,3,7
extent 82:23	familiar 30:11 41:20 96:9 127:22	fiduciary's 102:12	find 26:17 66:14 70:22 78:25
<hr/> F <hr/>	fashion 154:6	field 84:10 86:10,23 111:25 159:9 174:17,23	fine 4:22 5:4,10,21 69:25 88:22 106:22 116:3,5 138:22 142:25 143:2,6 189:5 192:10 193:6
facet 149:10	fast 46:12 70:13	figure 18:3 19:8 47:4 106:20 109:9	finish 4:25
fact 186:13	favorable 199:5	file 105:7	finished 23:21 35:14 36:6 62:10
factor 199:5	favorite 189:4	filed 32:7 59:23 60:5,8 71:5,6,22 72:20 75:5 77:12,15 78:5 79:21 81:14 87:13,14 91:2 92:4,12,20 104:1,21, 24 107:20 124:2,7,24 125:18,19 126:2,7 127:8 128:12 160:8,11 161:12,21 162:11 163:11 170:17 187:11	finishing 120:25
factors 158:9 176:23 199:2	February 90:25 132:11,16,18	filing 71:25 104:15 161:22 162:2,8	firm 8:5,16,21 9:14 11:16 19:23 20:11,25 115:18 121:2 161:2 196:14
facts 88:18	fee 21:3,7 22:17 24:7,10, 14,15,18,23 25:8,13 26:3,9,18,23 27:1,10, 13,19 28:7,9 29:13 30:21 31:1,14 32:22, 25 33:3,8,12 34:7,11, 14,23 35:4,22 37:5 40:10,23 41:4,12 50:7 61:10,17 62:13 63:4,9 64:7,9,17 65:25 66:8, 20 68:7,10,14,17,23 69:5,6,15 185:20,21, 23 186:3,10,14,17,20, 24 187:19,22 188:7, 12,14,19,24 197:10	final 30:4,14 31:11 80:5 136:22 142:12,19,22 173:15 196:3 202:5	flip 51:23 52:10
factual 93:8 94:1 196:19	feel 3:17 5:19 30:8 89:5 149:17 206:21	financial 6:17,23 7:2,9 8:1,4 11:13,16 17:19,23 18:2,7,10,20,23 19:1, 7,16 20:11,15 37:24 38:24 39:10 68:18 157:11 167:14	floor 107:8 188:10
failed 150:7	feeling 3:15	financials 19:4	Florida 119:24
fair 5:7 7:14,16 8:23 11:13 15:4 21:9,15 26:4,12 28:18 31:2,14 32:14 34:22 35:22 42:6,11, 13 45:12 47:1,17 51:18 57:11,13 61:23 62:6 63:6,10 66:12 81:3 83:21 85:9 86:17 94:16 96:7 97:4,6 99:1 101:9 103:23 107:3 111:11,13 113:22 115:19 119:7 121:11 124:7 125:22,25 126:16 127:22 128:12 132:3,4,14 134:17 136:18 142:19 143:23 144:3 148:11,13,15 149:14 150:12 152:20 153:9 156:14,20 159:13 163:7 166:23 170:22 175:6,7 181:2, 23 194:7,14 208:1	fees 21:2,10,15 22:3,4 28:16 36:13 37:11,20 60:16 66:24 67:24 68:2,12 102:11 151:18	financier 82:1 83:14	flows 19:3 144:23
fairly 147:23	felt 149:18	financing 24:11 25:9 26:9 27:3, 7,9,12,13,20 28:12 29:7,21 30:24 40:19	fly 202:1
	fiduciary		focus 88:7
			Foerster 2:13
			fold 182:10
			folks 139:9 146:8

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

follow 79:1 150:9 footnote 71:21 72:8 73:3,4 159:5 footnotes 71:18 forest 170:10,22 171:9 forgotten 121:13 form 2:23 8:3 9:12 10:13 11:2,7,14 13:3 15:24 16:13,14 17:3,25 18:12,25 20:3,9,17,23 21:19 22:5,6,14,19 23:25 24:9,20 25:4,11, 21 26:5,13,19 27:17, 25 28:14 29:2,8,14,19, 21 31:3,15 32:16 33:13,17 34:18 35:1 36:16,21 37:1,6,12,17 38:1,14,20,25 39:6,19, 25 40:6,16,25 41:6,14 42:7 43:21 44:14,23 45:14,23 46:2,10,18 47:2,7,9,20 48:5,11,19 50:2,9 53:21 54:2 56:15,23 57:12,18,20 58:14,25 59:6,12 60:13,19 61:13,20 62:18,24 63:19 64:2, 18,19 65:3 66:1,17,22 67:6,13 68:1,19 69:1, 10,18 72:12,18 73:13, 25 76:20 78:3 79:23 80:12,17 82:3 83:17 84:7,19 85:12,24 86:6, 14,20 90:14,15 91:12 92:2,10,17,18 96:11, 17 102:21 103:1 105:20 106:5 107:6,14 109:19,23 111:2,15 113:4,14 114:1,21 115:2,20 117:4,5,9,21 118:6,17 119:1,8	125:5 126:8 127:1,9 130:15 132:24 136:5 139:15 140:22 141:3, 17,23 142:6 143:18 145:14 146:21 147:8, 13,18,24 148:6 158:12 162:5,20 163:12 165:13 168:10,19 169:3 171:17 185:16 187:5 188:2 191:14,23 193:13 196:23 197:11 199:23 200:7 formal 114:6,15,19,22,25 115:10,12,24 159:25 160:1 173:16,20 190:15 formally 112:15 115:14 format 172:25 206:20 formed 178:24 179:2 forms 44:2 172:21 forum 104:12 forward 148:14,16 167:4 184:10 forwarded 205:9,10 209:9 found 204:3 205:25 foundation 25:3 founder 19:23 fourth 171:13 Fox 17:4 53:2,3 77:2,7 78:18 95:10 97:5 111:22 113:1 201:20	204:11 205:10 206:11 208:7,9 Francisco 9:14 free 30:8 74:22 206:21 front 12:8 60:1 74:5 87:18 95:2 140:7 180:14 204:2 206:17 fruition 198:24 full 3:22 157:6 fully 156:7 fun 154:2 fund 8:24 9:14,16,17,18,19 49:5 149:19 202:23 fundamental 196:21 funds 30:22 139:4 140:14 144:16,19,24 145:1 146:20 147:5 148:19 149:12 150:3,8 153:23 154:13 157:9 167:7 169:7 177:18 182:14, 16 183:8,13 furnished 77:11,14 <hr/> G <hr/> gain 138:11 gave 133:5,23 183:21 200:20,23 general 6:17 83:8,9 109:8	149:5 185:9,10 generalizations 62:5 generalize 44:25 62:5 generally 6:21 8:5 18:20 83:23 100:6 160:22 188:11 201:24 generating 27:13 Genesis 74:21 81:20,21 90:6, 18 112:14 136:11 152:3,14 172:3 174:11 175:12 180:18 189:20 196:1 198:1,9 200:3 201:14 gentleman 138:5 gentleman's 138:1 George 174:10 201:12,13,16, 17,21,25 gestation 115:24 gestite 114:3 give 3:22,24 87:16 90:19, 20 151:9 155:12 162:25 giving 189:13 Global 90:6 good 2:7,8 33:21 42:5 70:18 137:9,11 149:8 granting 75:1
--	---	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

great 3:17 17:13 42:11 70:17 74:11 97:14 128:14 137:13 169:23 greater 170:5 Greetham 138:5,8,17,25 139:10, 12,14,21,24 140:11,15 141:2,5 147:11 gross 181:13,18,20 group 75:24 112:12,23 138:4 139:11 150:20 154:2, 12,14,18,19 156:24 158:9 guess 19:23 40:22 62:15 109:18,20,24 113:18, 24 114:15 118:9 126:12,16 146:4,7 156:9 168:6,23 200:15 204:15 208:6 guy 149:13 guys 10:1 16:12 136:3 169:11 196:5 <hr/> H <hr/> half 8:11 27:11 28:7 45:16 46:4 120:3 148:1 165:8,20 167:8 169:11 202:9 halfway 90:5 Halimi 197:20 Hall 176:10 handed	77:5 149:14 handle 150:4 handled 187:1 happen 80:21 117:22 167:12, 18,20 happened 85:7 119:11 203:22 happening 165:19 190:7 happy 11:8 45:10 106:19 121:9 162:12 168:5 hard 46:12 88:15 102:10 harder 120:6 he'll 123:14 head 3:14,19 6:10,13 8:8 17:11 22:10 35:8,10 38:6 53:25 80:4 121:10 140:2 143:10 149:3 150:10 168:9 headline 145:21 151:10,21 152:18 156:15 174:24, 25 175:4,18 176:24 heads 189:13 hear 5:9 70:6 88:16 108:20 hearing 56:17 79:4,12 heartedly 177:21 hedge 8:23 9:18,19	held 51:25 65:7 72:9 Heller 14:15 74:21 75:21,23, 24 76:5,8 80:10 81:5, 20,21,25 82:8 83:6,13, 23 84:3,8 85:10,14,21 86:4,17,21,24 87:4,6 96:8,15 97:6 172:2,11, 15,20 173:1 174:2,9, 11 189:19 196:1 198:1,9,20 199:6,7,10 200:3,21,25 201:13,14 202:4,5,15 203:16 204:6,19 205:9 206:4, 6 208:13 209:6,21 Heller's 173:22 helped 208:7,9 helping 9:24 helps 190:25 hemorrhaging 120:4 hereunder 26:24 Higgins 70:5,9 73:2,14 74:3, 13,14,17 76:24 78:7 79:7 80:1,14 81:2 82:4 83:20 84:11,24 85:20 86:2,11,16 87:2 88:3, 8,15,20 89:17,20,21 91:8,18 92:7,14,22 94:25 95:9 123:9 higher 21:16,17 107:10 108:9 178:3 190:25 highest 56:17 102:9,16,17,19, 20 103:1,5,6,13 177:24 185:11 198:7, 10	history 119:18 hit 79:22 hold 70:14 87:25 123:11 Holdco 90:6 holdings 179:6,7 189:25 holistic 158:9 home 209:14 honest 120:22 honestly 109:7 149:16 hope 148:11 hoping 133:15 horse 41:21,23,25 42:4,12, 14 43:1,4,15,18 44:6 51:14 52:18,20 54:14, 15,19 71:14 105:4,6, 10,12,16 106:1,12,13, 16,25 107:4,7,13,22 108:13 124:13,20 125:4,7,9,22,24 126:1, 6,15,21,24 127:7 136:4,7,18,20,22 150:23 153:20 154:4 155:5,8,16 156:18,22 157:5 158:15,17,23 159:24 160:22 162:2, 9,11 163:10 164:21 165:2,11 167:17,19, 21,24 168:1,25 175:22 184:14,17,19,21,25 185:5,10,15,24,25 186:9 188:10,11,13, 21,23 189:24
---	---	---	---

Dan Moses

In re: Cash Cloud Inc.

hotel 134:13	important 196:15	incorporated 77:20 91:21	99:15 104:16 132:7, 21,22 205:9
hour 5:18 97:23 169:10	imposition 37:20	incorrect 130:3,14 170:3	injects 43:10
hourly 21:6,7 22:2	impression 146:9	increase 202:22	institution 44:4
hours 17:9,10 134:12	improve 121:25	increased 156:19	institutional 6:11,14 8:8
huh-uh 4:15	inartful 166:10	increases 178:3	instructs 5:12
hundred 94:2 122:24 129:14	inarticulately 157:21	incremental 203:7	intend 195:25
Huygens 16:11 19:22 20:1 23:10 32:11 37:2,4 98:15	inbound 135:22	independent 6:16	intended 68:24 86:18 158:15 196:10
<hr/> I <hr/>	incentive 32:22,25 48:7	indicating 36:4 50:25 60:24 95:6 208:20	intent 86:22
	incentivize 68:24 69:9,14	individual 44:3 48:8 185:6	intention 183:24 184:4,7,9
idea 26:2,16 118:14 119:11 146:1 191:18 198:7	incentivized 66:13 68:20	individual's 111:25	intentions 85:15,22,25 86:5 184:1
ideas 114:5 115:24 133:11	incentivizes 69:20 108:6	industry 7:1	interactions 15:6
identified 26:11 205:23	incentivizing 33:6 69:17	informal 190:6	interest 100:15 135:1 180:5 194:18
identifies 78:1 104:13	include 58:2,13 68:14 76:15 84:6,13 86:13 165:22 166:17 170:8 205:25	information 6:22 13:20 45:10 129:17 130:8,9 131:6 147:3 190:25 194:5,6	interested 42:14 43:1 56:16 99:19 101:23 105:3,9 133:10,24 135:17 136:19 144:24 150:22 159:12 171:7
identity 22:18 28:20,25 29:6 41:13 62:13 63:5,10	included 79:11,13,17 85:5,11, 17 90:18 113:22 151:16 155:17 165:20 176:19 196:8	informed 37:7	interesting 190:9 196:2
imaging 190:8	includes 103:6	informing 164:11	interests 74:23
Immediately 8:14	including 5:17 79:20 83:25 84:17 116:25 134:24 164:12 167:17 182:7	initial 97:12 101:7,9 105:16 107:4,8 142:15,20,21, 23 150:17 155:16 156:6 159:15,22 165:15 166:3,9 167:10 172:19,21 173:19 185:25 205:8	Internet 122:12
immensely 176:7	inclusion 79:5	initially	interpreting 168:21
impact 37:20 63:12,15 64:22, 25 123:2 189:25			
importance 88:10			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

interruption 108:21	iterations 194:20	Kepro 83:2	15:22 148:3,10 150:15 155:3 158:13 162:15, 24 163:17,21 166:1 168:12,22 169:9,14, 17,18 171:18 172:9 178:9 185:19 187:9 188:6 189:8 191:16 192:2 193:14 195:7 197:1,13 199:24 200:9 205:1 208:22 209:16
intricacies 194:12	itterative 100:12	key 4:10 19:23 176:19	knowable 13:21
invest 9:24 10:15	<hr/> J <hr/>	kick 180:15 181:1	knowing 24:23 122:21
investment 6:17 7:2 8:2,21 9:2 11:12,17 17:21,23 18:10,23 19:6,16 20:7, 12,15 37:24 38:24 39:11 49:5 68:18 154:18	James 16:11 19:24 20:14 89:2 93:20 94:12,13 129:10 204:15 206:9 208:1	kind 107:17 150:25 155:10 161:9 196:16	knowledge 3:25 6:18 14:21,23,25 15:1,5,11 18:20 36:12 38:15,16 39:1,7 40:1,7 51:17 58:11,15,18,20 76:25 77:10 78:20 86:24 92:6 93:22 97:2 111:3 122:19 130:2,8, 12 131:2,12 138:11 141:4,18 207:7,15 209:20
investments 9:3,5,6 10:5	James's 93:24	Kissner 2:6,12,21 3:2 8:6 9:15 10:16 11:5,10,18 12:13,15,16 15:25 16:15 17:6 18:5,15 19:12,25 20:6,13,20 21:1,21 22:8,16,21,25 24:4,12,25 25:5,15 26:1,7,15,21 27:22 28:3,17 29:4,10,17,22 30:2 31:5,17,21 32:17 33:15 34:21 35:2 36:18,23 37:3,9,14,19 38:4,17,22 39:3,7,9,21 40:3,8,17 41:2,9,16 42:10 43:24 44:20 45:1,18,25 46:6,14,21 47:5,11,22 48:10 50:6, 11,23 51:24 52:1,2 53:23 54:5 56:5 57:3, 14,21 58:17 59:3,9,15 65:8 70:2 72:18 73:13, 25 74:6,7,12 79:2,23 83:17 84:7,19 85:12 86:6,20 87:18 88:1 89:1,9,18,19 90:15 92:18 94:22 96:13,20 103:9 105:23 106:6 107:11,16 108:19,22 109:21,25 111:5,17 113:6,17 114:8 115:4, 25 117:23 118:8,22 119:4,10 123:17,19 125:8 126:11 127:4, 13,18 128:18 130:19, 25 136:8 137:17 139:19 140:25 141:7, 20 142:3,9 143:22 145:16 146:23 147:10,	Komodo 49:3,4,21,22 50:17
investor 134:4 148:2 154:3,19	January 17:15,16		Krepo 191:25
invoices 15:14	Jason 49:3		<hr/> L <hr/>
involve 61:24 63:3	Jim 176:10		lack 33:2,7,11 80:19 181:5
involved 42:12 43:13 45:3 46:16 47:1,18 68:10 75:10,14 78:12,15 96:19 97:1 99:22 167:22 190:19 201:18	joined 2:8		language 66:11 116:23
involvement 75:12	joint 198:10 200:3,6		laptop 205:3
irrespective 200:22	judge 148:8,12 168:15		large 7:17 176:19 198:19
issue 32:3 73:12 121:8,9,12 163:6	judging 168:16		largest 198:18
issues 72:3 121:22 122:16 123:1	judgment 102:11 177:8		late 170:16
Item 145:10	July 87:14 202:6		
items 24:22	June 14:8 75:5,6 78:10 79:21 80:3 82:13,17, 22 84:4 86:19 122:3 134:5,18 173:4 180:2, 4 195:24 202:7		
iteration 150:20 154:13,15	<hr/> K <hr/>		
	keeping 159:10		

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

lawyer 2:11 163:4	64:13 66:10 67:15 110:19 112:15,16 133:4 170:25	literally 203:5	45:13 109:7 120:6 145:13,17 149:23 155:21 162:9
lawyers 112:10	lenders 6:16 49:17,20	litigation 155:17 187:11,13 190:5 191:5,7,17,20, 21 192:10	loud 23:18
lay 100:13	lessor 72:6 76:19 78:11 82:1 83:14 87:5 91:10 92:1, 9,16	litigations 192:5	love 192:23,24
laying 25:3	letter 23:5,6,24 26:8 29:12 30:15 31:2,12,14 35:6 36:15 40:11 50:1 67:25 69:5 123:14	LLC 6:7 52:17 75:24 90:7 158:24	low 176:11
laymen's 64:3	letters 68:3	loaned 30:22 66:9	lower 21:17,18 122:25 132:6 156:16 165:21,24
lays 24:2	letting 177:7	lobby 134:13	LP 70:11 71:22 76:10,14 90:7
leading 82:16 88:6	levels 176:11	located 40:14 41:5	Lu 49:3
learn 80:8,15 84:15 87:24 190:12	liabilities 42:23 156:11 158:3,4	location 192:18	lunch 70:1 97:17
learning 37:10	license 121:8	logical 96:12	<hr/> M <hr/>
lease 71:24 72:10,13,24 78:5 81:13	licenses 119:24 176:9	logistics 93:25 94:8,13,14	M3 38:7,8,11,23 39:12
leased 71:23 84:5	liens 74:22	London 134:13 195:11	M3's 39:2
leases 74:25 76:13 78:1	likelihood 178:3	long 8:7 9:8,17 10:2,11 17:7 134:10 199:10 202:3	machines 14:15 76:10 83:3 85:5, 16,22 86:5,8,22 87:1 93:9 122:16 155:24 158:14 159:2 170:4 176:12 192:8 195:13 204:3,21
leave 10:19 12:8 139:5 196:3	limited 2:14 58:6 90:7	longer 38:19 39:24 171:2 196:14	made 73:17 144:19 158:8 182:12 201:8
leaving 139:3	liquidated 64:13	looked 15:12,13,14,16 83:1 99:17 146:5,16 165:16 206:14,25	maintaining 90:22
left 42:23 146:18 169:11 178:23	list 208:17	lose 70:14	major 192:16
legal 163:1,6,13	listed 13:8 49:19 111:25 174:15 194:25	lost 119:23 154:17 167:3 176:9	majority 22:1
lender 25:17,23 26:10,11,17 27:8,12 28:7,8,13 30:22 49:2,25 50:8,14, 16 51:11 53:10,18 57:24 61:10,17 63:24	lists 90:6 149:3 189:17	lot	

Dan Moses

In re: Cash Cloud Inc.

make 66:23 71:1 81:24 88:25 124:10 143:23 157:7,12 182:8 183:16 191:13 192:25 206:19 209:12 210:4 makes 80:7 81:16 92:6,13 162:22 178:4 making 4:10 63:13,16 64:23, 25 130:1 managed 99:4,5 management 9:2 18:3 44:22 45:21 46:8 100:21 managing 9:6,21,23 99:7 mandate 48:15 MANN 2:19 3:1 8:3 9:12 10:13 11:2,7,14 12:11 15:24 16:13 17:3,25 18:12,25 19:21 20:3,9, 17,23 21:19 22:6,14, 19 23:25 24:9,20 25:11,21 26:5,13,19 27:17,25 28:14 29:2,8, 14,19 31:3,15 32:16 33:13 34:18 35:1 36:16,21 37:1,6,12,17 38:1,14,20,25 39:6,19, 25 40:6,16,25 41:6,14 42:7 43:21 44:14,23 45:14,23 46:2,10,18 47:2,9,20 48:5 50:2,9 53:21 54:2 56:23 57:12,18 58:14,25 59:6,12 60:13,15,19, 21 61:13,14,20,22 62:18,20,24 63:1,19, 20 64:19,21 65:3,4,9 66:1,3,17,18,22,25 67:6,9,13,16 68:1,4,	19,22 69:1,3,10,12 74:11 76:20 78:3 80:12,17 82:3 85:24 86:14 87:25 88:4,12, 17,22 89:5 90:14 91:12 92:2,10,17 96:11,17 102:21 105:20 106:5 107:6,14 109:19,23 111:2,15 113:4,14 114:1 115:2, 20 117:21 118:6,17 119:1,8 123:16 125:5 126:8 127:1,9 130:15, 23 136:5 139:15 140:22 141:3,17,23 142:6 143:18 145:14 146:21 147:8,13,18,24 148:6 158:12 162:5,20 163:12 165:13 168:10, 19 169:3 171:17 185:16 187:5 188:2 191:14,23 193:13 196:23 197:11 199:23 200:7 208:20 210:2 March 104:4,6,24 105:1,5,14, 25 106:11,15 128:13 129:3 131:18,20 133:13 mark 29:24,25 31:19 56:1 89:3 127:15 128:15 150:13 154:25 163:19 172:7 178:7 189:5 195:5 204:23 206:18 marked 12:9,10 22:23,24 30:1 31:20 50:21,22 56:4 70:21 76:2,4 89:2,11, 15,23 95:1 103:16 108:16,18 123:7 127:17 128:17 137:14, 16 140:8 150:14 155:2 163:20 165:12 172:8 178:8 189:7 195:6 204:25 market 107:13,25 128:11	161:7,25 162:4,19 168:14,16,21 marketed 82:16,18 86:8 90:17, 21 133:23 marketing 11:21,24 14:1 82:21 90:23 97:18 98:25 128:24 marketplace 133:8 markets 168:15 markings 75:20 Mason 70:2,9 77:4,6 87:25 88:4 89:16 94:20 massive 176:5 198:15 massively 114:6 matching 164:2 material 115:9,15 materially 60:20,22 120:13 math 165:15,23 170:6 mathematically 151:19 matter 28:20 82:2 98:1 126:10 184:22 matters 15:19 maximize 19:10 48:8,12 59:11 maximized 59:8	maximizing 59:14 192:25 Mcalary 72:4 77:18 129:16,18, 23 130:5,11,13,17 131:8 133:15 190:8 Mcalary's 93:11 190:2 means 24:14 25:20 44:17 63:23 117:25 118:1,10 133:3 142:22 192:13 200:18 209:3 meant 192:13 193:10 measure 72:1,22 73:1 103:8 measures 81:16 medication 4:2,4 meet 94:20 209:23 meeting 200:19 memorialized 67:24 68:3 memorized 149:2 mention 107:21 mentioned 98:15 122:15 128:7 148:21 170:22 met 3:6 Mexico 119:24 Miami 49:6 Michael 197:16,18,20 201:17,
---	--	--	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

21,25	66:14 145:13,17 150:5		night
milestones	154:9 166:25 167:1,2	<hr/> N <hr/>	189:4 195:15,23
52:25 53:7,10,13,17,	176:15 185:23 202:21		nod
20 54:10 83:16 102:3	month	named	4:14
133:4,5	59:21 199:20 202:9	138:5	nods
million	months	names	3:19 17:11 140:2
120:2 144:13 145:10,	138:21	112:5	143:10 168:9
15 151:15 152:4,11,20	mood	national	nonrestructuring-
153:1,4 155:17	37:15	170:10,24	related
157:21,24 165:8	morning	native	7:12
166:5,13,14,23	2:7,8 97:17 106:24	206:20	normal
175:10,11,19 180:15,	134:14	NDA	4:8,18 124:8 138:15,
18 195:12 200:14	Morrison	99:21,24 100:16,19	16 177:16
203:13	2:13	necessarily	note
mind	mosaic	102:19 137:4 169:5	70:13 71:21 74:1
12:19 62:15 101:6	103:5,13 183:19	175:5	118:19 170:2
minded	Moses	needed	notes
165:17	3:5 94:24 108:23	6:22 85:19 148:19	70:12 150:11
minimum	205:5 209:17	149:18 150:1,2,5	notice
85:15,19	motion	182:6 203:6	12:5 56:15 104:9,11,
minus	51:2,8 56:7,10,12,24	negative	21 107:20 160:3
157:1 158:2,4,6	71:2 72:3 74:19 75:8,	3:14 22:10 53:25	notices
minute	11,15 77:11,14 79:20	162:8 202:16	108:12
11:19 30:9 41:19 55:7	87:10,14 88:10,18,21	negotiate	noting
minutes	89:13 94:15 95:3	28:15 53:12	73:11,21
169:15	124:6 126:2,13,25	negotiated	number
mix	motions	32:9 175:15 200:4	12:11 13:8 44:4
7:22,23,24	73:5,23 91:6,7	negotiating	123:13 151:21 152:18
mixing	mouth	53:16 174:10 175:16	159:4 170:4 172:22
164:2	178:6	201:15	182:15 193:22 198:13,
MNA	move	negotiations	20 205:21
177:16	74:4 92:23 148:14,16	80:21	numbered
models	184:10	net	208:17
83:2	moving	145:11 165:22 166:13	numbers
modification	149:23	181:14,16,18	71:13,16 84:12 86:13
32:13	multi	Nevada	95:17 151:10 152:9
modified	59:21	70:11 71:22 76:9,14	186:9
40:12	multiple	90:7	numerous
moment	100:11 103:1 136:21	newly	45:17
11:9 156:7 170:14,15	139:13 149:10 176:23	178:24 179:2	<hr/> O <hr/>
171:16 183:10 196:17	179:18 197:24	nice	object
money	multiples	94:20	
	101:11		

Dan Moses

In re: Cash Cloud Inc.

8:22 24:21 25:4 88:24 102:21 140:22 196:2,5	objective 177:9	operations 19:2 94:5,12 119:20 176:6	outlook 121:1
objection 5:14 8:3 9:12 10:13 11:2,7,14 15:24 16:13 17:3,25 18:12,25 19:21 20:3,9,17,23 21:19 22:6,14,19 23:25 24:9,20 25:11, 21 26:5,13,19 27:17, 25 28:14 29:2,8,14,19 31:3,15 32:16 33:13 34:18 35:1 36:16,21 37:1,6,12,17 38:1,14, 20,25 39:6,19,25 40:6, 16,25 41:6,14 42:7 43:21 44:14,23 45:14, 23 46:2,10,18 47:2,9, 20 48:5 50:2,9 53:21 54:2 56:23 57:12,18 58:14,25 59:6,12 60:13,19 61:13,20 62:18,24 63:19 64:19 65:3 66:1,17,22 67:6, 13 68:1,19 69:1,10 72:18 73:13,25 76:20 78:3 79:23 80:12,17 82:3 83:17 84:7,19 85:12,24 86:6,14,20 90:14,15 91:12 92:2, 10,17,18 96:11,17 105:20 106:5 107:6,14 109:19,23 111:2,15 113:4,14 114:1 115:2, 20 117:21 118:6,17 119:1,8 125:5 126:8 127:1,9 130:15 136:5 139:15 141:3,17,23 142:6 143:18 145:14 146:21 147:8,13,18,24 148:6 158:12 162:5,20 163:12 165:13 168:10, 19 169:3 171:17 185:16 187:5 188:2 191:14,23 193:13 196:23 197:11 199:23 200:7	objectives 56:18	opine 93:7 163:6,14 199:17 208:6	outs 198:14,16,22
	observing 177:8	opinion 121:2 123:2 139:16 163:1,14	overbids 185:25
	obtain 42:9 79:5,9	opportunity 105:13,17	overlap 99:17
	obtained 42:5	opposed 4:14 66:14	oversee 6:21
	occurred 83:15 134:18	Optconnect 121:21 122:10,11 176:13 198:25	owed 118:25
	occurrences 80:24	option 133:24 134:2 197:23	owned 84:5 193:1,16 194:15
	offer 86:4 158:10 175:22 194:11 196:7,8 197:4, 15 201:1	oranges 165:17 170:7	owner 8:19
	offered 191:25 197:16 202:15	order 5:11 19:10 30:14 31:11 32:7,14 34:25 35:19 36:15 40:11,12 53:11,15 55:10 56:12 71:2 74:19 79:4,13 103:6 108:8 149:23 150:1,3 154:3 159:23 165:18 172:13 177:24	<hr/> P <hr/>
	official 16:22	orders 30:4	PA 160:6
	oftentimes 4:19	organizations 89:5	Pacific 8:16,20,21 10:19,23 11:1
	one-half 61:11	original 32:13 91:25 156:23 165:10,19 179:22 182:9 209:1	pager 103:18
	ongoing 191:8 202:23	originally 32:7 52:20 81:11 84:9, 21 93:12 169:7 193:17 200:14,17	pages 52:10 76:2
	open 100:17 132:25 134:19 180:8 197:23	outcome 69:20 135:7 198:5	paid 24:3 25:1 28:12 186:13,16,20 187:19 194:4 200:1 202:18 203:15
	operates 94:6		paper 116:24 117:3,8,9,11, 19 118:16 152:4 153:2 180:15,19,20 181:2
	operating 202:16		paragraph 23:14,19,23 24:1,14 27:24 30:17,19 31:6,9 33:1,25 34:2,6,13 35:12,15,20 36:2,8 40:22 52:15 60:25
	operation 10:24		
	operational 119:18 121:1,14,17 176:3 191:3 198:14, 15,23 203:2		
objections 2:20,23 5:9,11 74:9			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

<p>62:7,8 64:11 66:5 71:21 72:24 89:25 90:4,6 128:2 132:6 135:10,14,15 145:3 205:16</p> <p>paragraphs 80:20</p> <p>paralegal 111:22 113:1</p> <p>pardon 81:9</p> <p>parities 33:7</p> <p>part 63:4 68:24 76:15 81:22 94:15 98:23 99:7 120:10 174:14 187:18 188:14,22 194:15</p> <p>partially 195:16</p> <p>participate 183:22</p> <p>participated 194:24</p> <p>parties 39:5 40:5 48:22 56:16, 25 74:10 77:17 82:7 96:4,6,8,19 97:1,8,10 98:10 99:12,20,23,25 101:23 104:12 105:8, 11,25 112:13,22 113:3 119:12 127:6 132:3 133:10 135:17,20,22 136:12,14 139:13 150:22 164:12 177:22 182:8,12 205:11</p> <p>parties' 33:4</p> <p>partners 9:14,16 38:8</p> <p>parts 149:23</p>	<p>party 25:13,23 26:3 29:7 42:14 43:2 61:17 63:5 74:9 106:9,17 112:12, 17 131:14 142:16 163:2,15 175:15 184:2,8 198:16 201:15,22</p> <p>passage 61:3,8,15</p> <p>past 11:20 67:5</p> <p>path 59:19</p> <p>Paul 16:11 19:22 23:10 32:11 37:2,4 98:15</p> <p>pay 27:1,10 30:20 68:17 176:14 188:23 202:15 203:5</p> <p>payment 156:10 187:22 188:18</p> <p>payments 156:12 203:3,4</p> <p>pending 5:23</p> <p>people 6:21 44:7 99:17 100:22 114:11 136:19 146:13 178:2 200:4,5 207:23</p> <p>percent 10:10 27:2,11,13,19 28:7,10 30:21 35:17 61:11,18 62:13 94:2 120:3 129:14 186:6 204:2,4,5 205:22,23 206:1,4,8</p> <p>percentage 204:20</p> <p>Perfect 71:8</p>	<p>perfectly 138:22</p> <p>perform 204:8</p> <p>performing 10:5,17</p> <p>period 59:17,21 90:24 119:23</p> <p>periodic 5:16</p> <p>periods 118:1</p> <p>person 3:7 187:7 194:12 201:14 208:7 209:5</p> <p>personal 4:1 7:7 14:21 15:1,6, 11</p> <p>personality 148:4</p> <p>personally 58:7 59:4 207:24</p> <p>perspective 47:24 69:16 119:19 175:17</p> <p>pertained 57:16</p> <p>pertaining 209:20</p> <p>phase 122:8</p> <p>philosophy 150:20 151:7 153:19 154:2,11,14 156:15, 24,25 158:1,6 170:11 171:9,11 172:2,10 178:13,18,19 179:3,6, 8 182:25 183:25 184:5 189:25</p> <p>phone 83:7,10,11 100:22 135:22 146:13 200:20 201:20,21,22,23</p>	<p>phrase 102:15 112:21</p> <p>phrased 99:24</p> <p>phrasing 166:10</p> <p>physical 195:17</p> <p>pick 156:22</p> <p>picked 154:5 155:8</p> <p>picking 157:4 189:13 198:20</p> <p>pile 6:3</p> <p>place 24:11 37:8 44:22 45:22 46:9 53:12 83:16 167:16 182:9 184:19,21</p> <p>places 94:9</p> <p>plan 22:12 43:5,9,12,16,18 44:1,3,4,6,8,12,16 46:7,16,17 47:7,25 48:3 51:9 55:11,21,22 56:13,19 57:6,10,16 58:24 60:11 61:23 62:17,22 63:2 65:15, 18,20 69:19 101:4,17 104:14,15 109:4,9,10 111:7,9 113:2,9,13,22 114:4,12 116:23 117:12,16 120:25 123:3 132:22 133:9, 14,17,19,22,25 134:19 135:4 140:4 141:25 143:13,17 144:4,5,6 145:4 146:10,15 151:2,3,5,7 178:20,22 179:1,9,24 180:5 184:4</p>
---	--	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

planned 60:17 65:12	precautionary 72:1,22 73:1	152:17,20 155:15 156:16,18 157:6,17,20 158:8 165:4,6,24 166:23 174:20 175:4, 19 176:24 177:24 178:1,3 180:23,25 182:19 185:11 186:7 188:22 191:1 199:25 201:1 203:18 204:5,7, 9,20 205:24 206:8 209:22	124:1,8 125:15,18 126:2,6,13,18 127:8, 11,21 137:5 149:2 162:14 168:5 176:22 182:17 183:3
point 5:19 67:22 106:10 118:11 121:4 133:3 159:4,11 170:12,21 171:2 202:21	predetermined 194:2	prefer 44:12	proceed 57:2
pointing 79:24	preference 48:3 59:4,7 62:16 102:6,7,11	preferred 101:24 102:1	proceeding 72:7 91:11
pool 82:25	preliminary 90:2	primarily 11:12	proceedings 78:19 81:10 92:1 93:6 108:21
pop 12:7	preparation 16:3,7 17:2	principal 6:10,13 8:8,14,19 19:23 47:18 76:14 118:24 119:7 201:13	proceeds 35:18 64:12 91:17 181:14
portfolio 9:25	prepare 15:12,22 208:8	printed 12:4	process 11:21,25 14:1 42:6,13, 22 43:16 45:5 46:16 57:1,4 94:10 97:18,19 98:19,25 99:4,5,7,16 100:12,16 101:2 102:12 104:13,14 107:5,10,19 108:10 109:8 120:11 147:21 149:11 154:20 155:9 156:6 161:2 177:16 184:16,20 187:14 190:14 197:24
portion 21:10,20,22 26:25 27:7 28:4 153:11	prepared 14:3,9,17 94:4 103:24 104:6,7,23 129:20,22 194:5 207:20	prior 25:24 34:24 36:14 57:15 67:23 68:7,9,11 78:24 79:3,12 85:7 104:18 118:25 131:23, 25 132:1 167:3,5 172:1 177:11 190:14	
position 6:8 90:11 91:13,25	preparer 207:24	priority 153:15	processes 102:4 124:6
positive 161:24 168:25 169:1	preparing 15:9 16:18 17:8 75:11, 16	privy 78:8 98:6	produced 206:20
possession 30:24	preserve 5:12	pro 79:15 201:1	product 111:12,19
post 91:1 146:16 195:10	preserved 2:24 74:9	problem 77:7 123:22	professional 24:3 151:18
potential 50:4 56:13 57:6 99:6 100:5 105:25 110:22 134:4 143:8,17 144:3 145:18,24	pretty 120:12,16,20 121:5 148:4 162:8 196:18	problems 120:1 121:15,18 176:12 198:15	professionals 76:22 130:1
potentially 59:14 62:22 63:7 65:16 101:23 105:3,9 133:24 135:17 179:14 181:17	preview 93:19	procedure 15:16 55:10 57:6	proof 72:21 78:5 81:14 91:2 92:4,12 139:4 140:14 146:19 147:4 148:19 149:12,18 150:2,8 153:23 154:2,13 157:8
power 192:20	previously 25:9 86:7,12 89:10 193:25	procedures 51:2,9 52:8,9 54:22 55:3,14,20 56:7,10,13 57:9 58:3,12 59:23 60:5,7 71:3 123:25	
practice 20:2	price 76:9 79:14,16 102:20 103:1,5,6,13 118:11 145:22 151:11,15		
pre-sale 98:19			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

<p>167:7 168:1,3,7 177:18 182:13,16 183:8,13</p> <p>proposal 55:11 111:14 113:20, 25 114:4,6,15,19,22, 25 115:11,12 137:21 142:5,8,12,15,19,20, 21,22,23 144:21 152:2,10 159:25 160:1,2 173:15,17,19 181:10</p> <p>proposals 115:23,24 132:25</p> <p>propose 151:1</p> <p>proposed 51:13 56:19 107:21 113:9,13,22 115:13 145:5 151:24 158:19 159:22 163:2 165:3 167:5</p> <p>proposes 143:3 173:12</p> <p>proprietary 9:5</p> <p>protections 42:1</p> <p>provide 4:13 6:17 122:12 132:23 139:4 146:19, 24 150:8 151:7 153:23 173:1</p> <p>provided 27:6,7 28:5,12 50:3 56:16 61:3,5,9,16 75:18 130:17 141:19 182:16 184:5 198:4</p> <p>provider 122:11</p> <p>providing 6:22 29:7 63:5 75:12 190:21</p> <p>Province</p>	<p>6:7,9 8:4,15 11:11,15 15:14 16:7 17:1,13 19:13,15,19 23:5,7 25:12,17,22 26:4,8,10, 11,16,17 27:1,8,10,12, 18 28:7,8,13,24 30:15, 21,23 31:1 32:10 33:11,16 35:17,21 36:25 37:23 40:14 41:5 45:24 46:1 48:14, 19,21 50:7 58:9,12,21, 23 61:9,17 62:12,21 64:9 65:24 66:13,23 67:1,4 68:2 69:9,14 98:24 102:5 128:10 129:11,17,24 139:9,13 146:8,13 150:9 190:17,23 191:1 194:8 197:9 204:12,13 206:10 207:18,23 208:7,12</p> <p>Province's 36:13 60:16 61:10 63:4,9,13 64:7,22 67:24 69:5</p> <p>proviso 27:24 28:2</p> <p>prying 4:2</p> <p>public 104:12</p> <p>publicly 104:21</p> <p>pulled 196:13</p> <p>purchase 56:14 57:7 75:22 76:9, 16 79:6,12,14,16 81:23 84:5 86:18,22 102:20 142:1 145:21 151:11,15 152:17,19 155:14 156:16,18 158:8,15 159:15 160:4,16,18,23 161:6, 12,16,19,24 162:3,12, 18 164:22 165:4,6</p>	<p>166:22 167:3 174:15, 20 175:4,9,19 180:23, 25 182:19 186:6 199:25 201:1 203:18 204:5,7,9,20 205:24 206:8 209:22</p> <p>purchased 166:3 206:5</p> <p>purchaser 97:13 157:4</p> <p>purchasers 99:6 100:6,11,14 101:21</p> <p>purchasing 166:6,18</p> <p>purports 71:24 77:25</p> <p>purpose 69:8,13 72:2 111:1,4</p> <p>purposes 73:6,24 142:17</p> <p>purse 203:17</p> <p>pursuant 12:24 79:15 119:5</p> <p>pursue 33:17 48:19 58:19,23 133:19</p> <p>pursued 133:22 138:2</p> <p>pursuing 62:16 133:13 134:19 183:25 184:2,4</p> <p>put 12:7 24:11 37:8 89:6 114:5 120:21 142:13 153:7 182:9 192:19</p> <p>puts 19:3</p> <hr/> <p>Q</p> <hr/> <p>qualification</p>	<p>168:4</p> <p>qualifications 137:8 149:5 168:1</p> <p>qualified 137:4 148:18,20,22,25 149:7,14,17 153:24 154:1 170:9 171:14, 23,24 173:23 177:13 181:12 182:5</p> <p>qualify 177:15</p> <p>qualitative 103:10 158:9</p> <p>quantified 156:7</p> <p>quantifying 155:22</p> <p>quantitative 103:8,12</p> <p>question 2:23 4:19,22 5:4,6,13, 22,23 8:10 20:21 25:7 35:9 73:16,18 77:23 91:19 102:23 105:22 130:21 135:2 139:3 143:20 144:19 152:14, 15 159:19</p> <p>questioning 70:12 88:5,17 144:25</p> <p>questions 2:14 87:22 88:20 94:18,24 100:25 139:6 209:17</p> <p>quick 100:19 128:3 209:8,11</p> <p>quickly 120:12,16,20 121:5</p> <p>quote 72:13 144:13 146:10 150:18 151:15</p>
---	--	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

R	real 128:3 151:11 154:13 161:11	recalled 150:2	189:12 204:19 208:23
raise 5:11	realistic 140:5 144:8,15 145:25 146:11,17	Recalling 159:8	recollections 15:6
raised 5:14 74:9	reality 152:19	receive 25:12 26:2 27:19 28:6, 9,20 35:17 53:11,15 116:15,23 136:2 138:10 153:16 179:12	reconcile 122:25
ran 8:16	realize 108:8 138:21 148:23	received 21:16,17 22:11 28:25 91:16 106:15 116:8 118:16,19 135:22 136:18,21 137:2,5 139:25 140:14 141:10 145:1 150:22 170:8 172:2,10 183:8 187:25	record 2:22 3:4 4:11,16 45:9 51:24,25 52:1 65:5,7,8 69:23 74:8 75:3 79:22 111:24 125:1 132:20 136:12,16 149:7 196:4 209:12,14,16,19 210:1
random 154:7	realized 119:20 135:6	receives 185:24	records 86:9 106:20 129:15, 18,24 130:5,10,13,17 131:7,15
rarely 162:7	reask 91:19	receiving 147:4 170:1 171:23	recovery 151:24 173:25 180:9, 16
rata 79:15 201:1	reason 3:20,22 12:4 34:16 78:17 85:2,6 126:4 129:12,20 185:3 196:20 207:8,11	recess 70:1 169:16 209:15	reduce 204:7,20
reach 206:22	reasons 44:11 162:17 175:24	recognize 12:17 23:1 30:3,5 31:22 56:6 103:19 108:23 112:4,8 122:24 127:19 128:19,22 137:18 150:16 155:4 163:22 164:1,3,4,6,20, 24 172:16 178:10 189:9 195:8 205:5 206:24	reduced 79:15
reaction 37:10,13,18	recall 4:3 12:18 17:17 21:2 22:15 28:18 39:8,13 41:15 45:6,8 53:19,22, 24 54:3 55:2,6 58:10 59:22 65:12,14 68:6,9 75:17 81:3,6,8 82:9, 11,12,14,15 83:12 87:5 95:9 99:9,14 101:20,22 105:1,19 106:3 124:11,14 125:13,16 126:3,9,14, 19 127:3 135:16,19 138:1,22 139:1,7 140:13,18,19,21,23 147:4,6,9,11,16 150:9, 10 160:5,7,12,14,17, 18,20 161:12,15,21 164:7 166:2 167:25 170:1 171:22 172:5 175:2 179:13,14 183:10 186:5,20,21, 22,23,25 187:2,6,13 199:9,18,21 202:13	recognizing 121:22 122:17,20	reduction 118:24 120:3 186:19 203:17 204:5,9 205:24
read 13:25 14:6,12 23:17, 18 25:7 26:25 28:1,4 30:6,17 31:6,23 33:1, 25 34:5 35:12 36:2 49:16,19 52:15 55:16, 19 56:11 61:2,6 62:7 66:5 71:20 76:11 78:22 93:23 95:20 110:9 111:23 116:12, 17 124:10,17 128:2 132:7,19,20 149:6 151:4 159:6 168:5 182:19,23 205:19		recollection 15:19 17:15 28:23 52:19 54:8,12 55:1,13 57:22,24 60:4 68:6 82:8 83:18 93:8 96:22 106:18,21 110:11,18, 20,21,24 125:2 136:23 138:19 147:1 159:7,14 170:14,20 172:12 174:2 179:13,17	refer 2:16 16:21 42:18 50:12,13 58:6 70:21 73:3 77:16 89:23,25 93:10,11 94:13 121:12 149:1
reading 108:2 118:20			reference 72:23 75:8 203:10
reads 104:4			referred 102:2 112:24 128:25 172:14
ready 89:16 206:23			referring 28:2 49:23 59:16 77:19 81:20 87:11 158:23 164:21 174:7 201:10
			refers 38:8 43:6 53:3 75:24

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

156:13 reflect 158:14 159:1 refresh 15:18 28:23 52:19 55:13 60:4 96:21 110:11 125:2 157:4 159:7 179:17 208:23 reject 155:25 related 43:23 54:9 55:14 74:25 75:1 155:11 192:7 209:22 relating 16:17 55:11 relationship 25:24 relevant 25:2,8,10 40:15 74:7 81:22 88:10 188:4 relied 130:4,10,16 131:13 relief 75:1 relies 129:14 relook 145:7 rely 131:15 207:13 relying 130:7 131:6,7,11 remain 44:22 46:8 remained 45:22 remedies 56:25 remember 25:6 28:22 36:5 107:1 128:13 134:8 138:24	139:2,3 147:19,25 148:9 155:18 181:13 182:7,9,11 186:7 194:3 198:7 199:12 205:11 remind 123:23 reorganization 18:4 19:9 33:6 43:9 44:17 46:17 47:8 55:12,21,22 69:16,19 109:10 111:7 113:2 116:24 117:13 120:8 123:3 132:23 133:17, 19 140:4 142:1 143:14 144:5 145:4 146:10,16 reorganize 43:11 133:6,8,16 reorganized 180:21 reorganizing 117:17 repaid 118:12 119:6 repairing 90:23 repayment 145:11 repeat 34:1 92:19 123:10 143:20 repeatedly 113:15 180:7 rephrase 5:5 62:25 73:19 84:1 106:8 143:21 reporter 4:6,24 29:24 31:19 89:11 127:15 154:25 172:7 represent 2:13 6:15,16 8:1 representation	207:13 representative 13:11,19 15:10 137:24 192:22 representatives 50:4 201:12 represented 200:4 representing 7:21 16:17 30:15 requested 35:24 36:11 145:2 required 13:19 reservation 72:3 73:7,9,22 reserve 73:11 207:16,17 210:2 resolution 187:19 209:24 resolve 33:7 resolved 54:1 187:15,16 respect 14:18 15:6 42:15 183:8 187:11 respond 147:2 responsibilities 9:22 102:12 responsibility 6:13 185:8 responsible 9:24 93:25 rest 129:11 155:22 200:25 restroom 5:21 restructuring 7:6,10,16 26:23 29:13	31:13 33:3,8 34:6,10, 14,23 35:4 40:23 41:4 45:4,16 46:4,16 64:17 69:4 117:4 restructurings 46:23,25 47:19 results 74:20 75:13 retained 7:25 17:14,20,22 33:16 37:23,25 39:11 retention 17:13,18 19:19 30:4 32:14 34:25 40:11,12 return 64:4 revenue 120:2 revenues 122:25 review 30:9 55:5 57:19 109:1 195:22 210:4 reviewed 13:1,3 23:11,12 54:24 57:16 75:17 reviewing 12:19 75:15 207:4 revise 58:12 revised 166:16,18 169:24 170:13 173:7 177:13 196:7,8 revisions 172:22 revokes 79:10 right-hand 71:12 95:17 124:16 132:6 rights
---	--	---	--

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

56:25 72:3 73:7,9,11, 22 81:9 207:17	181:6,19,20	11 205:23 206:15	select 106:13 125:21 126:5 160:22
Riley 39:14,16,17,24 40:4	running 177:16 196:15 202:20	scheduling 56:16	selected 52:17 54:13,18 106:11 125:4,7,10 126:1,24 127:7 136:22 153:19 184:11 198:2
ring 173:4	S	scope 17:17	selecting 124:19
risks 122:21	sake 89:6	screen 201:23	selection 126:15,20
road 170:10,23 171:10	sale 14:2 19:9 21:8 22:12 25:3 29:12,21 33:4,6, 12 35:18,22 36:10 40:20,24 41:12 42:6, 13,15,17,21 43:2,13 44:13,19,21 45:21 47:25 48:4 55:4,23 57:10 58:2,13,19,23 60:11,17 62:12,17,23 63:8 65:11 69:19 74:20 75:7,13 79:4,13 84:18 85:5,10,11 88:7, 11 91:14,15 94:10 95:3 99:16 101:17 104:13 117:10,12 124:6 145:18,22 159:9 173:14 174:6 176:2, 22,23 184:20 194:15 196:3 197:10 199:10 202:4,5	screenshot 154:7 183:15 195:16	selling 100:18 101:1 117:16
rocket 54:15,16 155:7 156:17 158:21,22,24 159:2,23 160:15 163:9 164:13 166:24 167:9 169:6,24 170:9,13 171:9 176:4, 17 177:1,10,17,20 184:14,25 185:5,14 186:2,14 187:22 189:23 195:20 196:7, 10,12 197:4	sales 11:20,24 14:1 35:18 41:4 43:3 97:17 98:25 104:19 127:6 145:24	screw 123:20	send 107:13,17 161:6 162:3,19 169:2
role 8:18 98:23	San 9:14	scroll 71:11	sending 113:1
roles 6:12 9:22	sat 134:11,13	seat 183:21	sends 107:18 161:24 168:24, 25 169:6
roll 203:5	satisfied 206:7	seats 7:19	senior 145:11
room 182:16	save 202:21	sec 122:1	sense 4:19 80:7 81:16 88:25 135:23 154:10 157:6 178:4 193:15
Rothschild 17:5 53:3 77:2,7 78:18 95:10 97:5 111:22 113:1 205:10 206:12	scenario 66:20	section 33:4 76:5,7,12 78:23 80:9 81:4 95:19 149:3	sentence 52:16 66:5 76:11 78:23 79:2 95:25 96:14 126:10 132:21 133:2 208:18
ROUGH 2:1,2	schedule 118:3,4 119:6 152:5,6,	sector 7:2	sentences 205:19
roughly 170:14 175:11		secured 30:23 63:24 64:13 72:2,17,21,25 73:5,23 78:6 81:15 90:8,12,20 91:2,4 92:5,6,13,20,21 116:12 118:19,20,21 136:3	separate 43:14 89:4 93:1 117:13 175:13 190:16
row 113:8 124:17		secures 64:4	
rule 161:2 182:12		securities 2:13 58:6 64:1 90:7 195:13	
run 11:20,24 147:17		security 117:9 118:2,10	
		seek 125:23	
		seeking 132:22	

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

separately 206:19	174:3,9 175:13 177:11,13 178:20 179:9 195:14,17	115:1 121:14 149:25	software 120:1 121:8,12,21 174:4 175:12 176:12 196:16 200:15,22 201:4
sequence 174:12	sheets 104:16 108:7 120:13 136:21,24 137:2,3,6 150:21 165:18 172:1 175:3 179:15 194:20, 21	significantly 119:21 120:1	sold 14:15 42:23 92:21
series 119:19	shipped 193:21,23	signing 136:17	solely 71:25
serve 106:1,16 184:25	short 9:17 10:2,11	similar 35:5	soliciting 135:1 180:5
service 208:15	show 4:15 70:3	simple 90:19 102:24 104:11 118:3 162:21 165:15 178:5 195:21 197:5	someplace 93:8 193:18
services 17:22,24 18:7	showed 154:3,6 167:7	simplistic 42:24	sooner 108:7
serving 105:3,9 185:5,14	showing 172:25	simply 56:25 118:21 176:1	sort 4:8,10 7:19 47:1 101:15 137:12 182:3, 10 183:18
set 141:21 151:24 165:3 173:25 180:9 188:10	shut 119:25 202:20	simultaneously 161:13	sought 125:14
sets 107:8 141:24	side 10:4,6,11 163:15 192:9 200:23	single 122:7 188:15	sound 96:9 137:9 186:11
shakes 3:14 22:10 53:25	sign 100:16	singled 87:6	sounds 70:17,18 74:11 186:12
Shame 204:16	signal 107:13,17,18,24 161:7,9,25 162:4,19 168:13,18,25 169:1,2, 6	sir 70:6 73:19 74:16 75:25 95:9,22 128:5	source 144:16,18,24 145:1
share 68:21	signaling 133:7	sit 91:9,23 182:3	speak 16:10 76:21 77:21 94:1,9 99:6 163:16
shared 119:12	signals 161:10	sitting 91:20 141:1 185:13	speaking 88:9 100:5
sheet 105:7 106:14,16,19 109:4,9 111:7,9 113:2, 7,8 138:3,10,12 139:25 140:3,7 141:8, 10 142:8,24,25 143:2, 3,7 144:22 145:6 146:5,9 150:17,19 151:1 154:10,21 155:18,22 156:6,15, 18,22,23,24 158:1,20 159:1,3,16,18,22 160:2,7 161:13 162:9 164:22,24 165:11,15, 20,21,25 166:4,9,16, 18 167:10 170:5 172:19 173:2,7,12	signature 23:10	situation 44:24 46:13 127:11 161:4	speaks 59:1
	signed 99:14	situation's 46:11	special 182:6
	significance 115:5	situations 161:3	specialize 6:25 19:14
	significant	Sleep 3:18	specializes 20:2
		slow 40:2	specific 48:16,19 54:4 83:8
		small 187:3	

Dan Moses

In re: Cash Cloud Inc.

99:16 180:16	stage 109:8 149:11	90:24 131:25 208:18	store 93:17 94:9
specifically 82:16 86:5 209:20	stages 119:17	starting 23:19 97:16 132:21	stored 93:1
spectrum 142:13	stalking 41:20,23,25 42:4,12, 14 43:1,4,15,18 44:6 51:14 52:18,20 54:14, 15,18 71:14 105:3,6,9, 12,16 106:1,12,13,16, 25 107:4,7,13,21 108:12 124:12,20 125:4,7,9,21,23 126:1, 6,15,20,24 127:7 136:4,6,18,19,22 150:23 153:20 154:4 155:5,8,16 156:17,22 157:5 158:15,17,23 159:24 160:22 162:2, 9,11 163:10 164:21 165:2,11 167:17,19, 21,23 168:1,25 175:22 184:14,17,18,21,25 185:5,10,15,24,25 186:9 188:10,11,12, 21,23 189:24	starts 205:16	storing 94:5
Spencer 19:24		state 3:3 45:8 149:7 176:3 210:1	straight 19:9 175:9 177:5
spend 7:20		stated 25:9 51:4 86:7	strategizing 59:18
spent 17:7 90:22 148:1 154:11		statement 71:23 73:17 79:17 90:3 102:24 126:5 133:21 209:3	strategy 10:12 19:7
split 174:22		States 27:2,11	street 149:13
spoke 83:9 98:10,15 99:9,20 101:23 105:12 138:2 157:3		stating 92:8	stressed 7:18
spoken 3:8 94:12		status 78:10,19 115:15	strike 9:3 10:7 16:1 19:14 22:3 40:9,20 44:10 45:19 50:13 58:21 60:9 64:8 65:23 67:1 68:6,14 72:16 77:25 81:9 94:3 101:21 103:24 108:3 110:1 114:23 118:14 120:18 125:24 135:1 136:2 139:20,22 146:5 158:18 160:12 173:10, 16 175:1 200:1
sponsor 43:6,12,16,18 44:1,3, 5,8,12,16 46:8 47:25 51:9 65:15,18,20 101:4 104:14 132:23 133:9,25 143:17 144:6 151:5,8 178:20,22 179:1	stamp 179:16	stay 80:24 129:7	strong 148:4 161:10
sponsors 56:14 57:6	stamped 33:24 34:3 35:12 51:21	step 83:21 100:15	structure 48:23 101:5,25 102:2, 7 105:15 109:9 134:1 144:14
sponsorship 22:13 46:17 48:4 57:10,16 58:24 60:12, 18 61:24 62:17,23 63:2 65:12 101:17 133:14 134:20 135:4 144:4 151:3 179:9,24 180:5 184:4	stance 92:8,11	steps 187:14	studying 18:20
spreadsheet 206:25 207:3,5,7,9,14, 19 208:2,8,11,15,24 209:2,21	standard 29:3 69:15 108:5,9,11, 14	stipulate 2:19,22 74:8	subject 15:7 53:19 115:8,11, 15 129:19 152:13 176:2 191:8 192:15 195:19
staff 129:11	standpoint 81:17	stipulated 33:9 34:12,15,17	submitted 84:3 104:17 175:14
	stapled 196:10 197:3	stipulation 34:20 40:13	
	start 4:21 33:22 70:19 100:23,25 164:5 172:14	Stires 19:24 20:21	
	started	stop 41:18 102:10	
		stopped 133:18	
		storage 84:9 174:16	

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

179:15	system 123:21	128:8 129:1 136:13 140:6 142:10 152:8 159:17 169:23 175:3 181:4,13,25 184:13 193:5 198:6 200:2	43:5 104:16 105:7 106:14,16,19 108:7 109:4,8 111:7,9 113:2, 7,8 120:13 136:21,24 137:2,3,6 138:3,9,10, 12 139:25 140:3,6 141:8,10 142:8,24,25 143:2,3,7 144:21,22 145:6 146:5,9 150:17, 19,21 151:1 154:10,20 155:18,22 156:6,15, 18,22,23,24 158:1,20 159:1,3,15,18,22 160:2,7 161:13 162:9 164:22,24 165:11,15, 17,20,21,25 166:4,9, 16,18 167:10 170:5,11 171:25 172:19 173:1, 7,12 174:3,9 175:2,13 177:11,13 178:20 179:9,15 194:20,21 195:14,17
subparagraph 26:22 95:20,23	<hr/> T <hr/>		
subsection 23:20 24:1	tab 12:6,11 22:22 29:23 31:18 40:21 49:7,10 50:20 55:25 56:2,3 60:23 70:21 74:5,16 87:16 89:10 95:1 103:15 108:15 123:7, 16,17,20 127:14 128:15 135:9,12 137:14 150:12 154:24 163:18 172:6,15 178:7 189:5 195:4 204:23 205:4 206:17	talks 78:4 Tanner 16:11 19:24 93:20,23 94:11,13 129:10 189:13 204:15	
subsidiary 192:14 193:2,5		task 18:19	
substance 87:20 98:9,13 190:10		tasks 6:20 18:22 20:19	
substantially 14:2 56:14 57:7	table 7:19 26:4 134:3 177:20 183:21	team 59:1 204:11	
success 21:7 68:21	tabs 87:17	teams 6:21 19:14,16	
successful 11:3 21:12 43:3 103:7 136:17	take-back 116:24 117:3,8,9,11, 19 118:15 152:4 153:1 180:19,20	teaser 99:11 100:14 105:14 128:7,8,11,21,24 129:2 131:20 136:13	terminology 67:22 143:24 165:9 173:17
suggest 96:15 118:23	taking 4:6 92:9,11 176:24	Tech 70:10	terms 24:23 25:1 42:24 64:3 66:13 85:15 120:25 122:22 144:15 150:5 155:22 163:9 176:21 187:24 192:16 195:11 196:15
summary 13:3 107:3 129:5	talk 6:2 11:19 16:12 17:12 36:24 37:4 58:1,22 70:13 83:22 88:9 94:4, 14,17 97:17,19 98:17 122:1 129:7 137:8,24 140:10 141:8 154:22 187:12 189:1	Tech's 81:9	testified 67:3
superior 158:10 175:22	talked 47:23 89:7 102:1 123:8 140:16 148:23 162:13 176:8	telecom 122:11	testify 13:11,19 14:3,9,17 15:9 191:12
supplement 15:11	talking 4:21 16:25 33:10 35:3 47:13 50:14 51:10 65:10 70:19 90:2 94:25 105:8,11 123:2	telling 92:12 101:20,22 106:24 126:19 131:5 155:7	testifying 98:16
supply 178:5		tells 108:6	testimony 3:23,24 13:15 15:23 16:4,8 17:2,8 95:14 98:9,14,18 107:4 129:15 169:21
support 30:23 120:7 127:20		ten 45:7 135:25 136:1 149:4 203:17 204:3,4 205:23 206:1,4,7	text 60:2 116:15 118:21
surcharge 87:10,15 88:5,14,19 89:13 94:15		tenor 140:21	
surcharges 181:16		term 25:16,20 34:10 42:18	
surprise 80:19			
surprised 80:8,13,15,23 84:15 87:24			
swap 65:21,25 66:14,21			

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

thereto 74:25	161:17 163:10 170:8, 12,14,15,16 171:16,25 174:5 175:11 176:7,16 183:7,11 184:3 191:25 192:15 194:19 196:17 198:20 199:11,13 202:12	13:25 14:4,6,10,12,18 38:16 58:16,20 92:24 187:8	treated 73:23 177:18 190:16
thing 4:13 5:22 67:21 100:13 124:11 141:2 151:11 162:8 170:2 200:18	timeframe 83:9	topics 12:22 13:8,12,15,22 14:22,24 15:1,2,7 59:2 69:24 209:19	treating 72:16
things 2:18 4:3 45:9 80:24 83:1 94:1 101:16 103:1,6 114:7,10 120:11,15,19 121:5,24 122:2,6,8 144:20 181:17,19 202:19 203:5	timeline 104:13 199:3 202:19	total 17:8 101:12 151:6 174:18 175:18	treatment 113:9,13,22
thinks 168:17,21	times 126:10 133:23 162:9 167:13 197:24	totally 5:21	tremendous 154:11
thought 60:9 76:23 91:6 119:22 131:17 144:11 146:15,16 156:5 161:15 167:14 169:7	timing 126:3,9	touches 7:15	trick 35:9
thoughts 5:20	title 9:20 57:20 76:7	tough 8:10	triggered 29:13
threat 176:13	today 2:15 3:16,23 12:24 14:4,10,19 15:9 16:18 24:21 50:14 88:6 89:4, 14 92:24 94:17 98:9, 14,18 106:23 141:1 185:13 194:6 204:16 209:18	town 95:19	true 71:24 72:9,13,24 129:13 196:22
threaten 176:13	today's 15:22 16:3,7 17:8	transact 150:6	trust 155:18
ties 24:24	toggle 56:19 104:15 133:22	transaction 21:13 22:5,13,18 26:3, 6 33:18,20 39:5 40:5, 24 41:4,25 46:8 47:1, 7,25 48:12,16,20,22 54:23 55:15,19 56:18 57:10,17 58:24 59:11 60:12 61:24 62:17,23 63:3 65:12 101:18,24 102:2,7 103:7 122:23 133:14,20 134:20,22 135:4 141:22 142:17 143:17 144:4 145:19, 22,25 150:25 151:3 155:10 163:2,10 167:5,6,14,18,21,23 173:12 179:24 180:6 183:25 184:5,10 186:18 197:9	trustee 32:8
till 90:25	told 81:25 105:13 131:19 168:23 173:3 201:4	transactions 67:5 101:1 102:4 141:25 143:8 144:2	truth 131:12
time 4:4 5:10 7:11,20 10:20,21 41:17 48:18 54:25 59:14,16,17 60:7,10 78:18 83:4,12 84:22 90:22 94:19 106:10 118:2,11 119:19,23 120:8 126:1 127:7 128:11 129:19 130:3,13 131:3 133:3, 6,12,18 138:10 149:9 154:11,20 155:23 156:8 159:4,11 160:12	tone 138:13 140:21	transcript 2:1,2 210:3	turn 12:6 13:4,24 22:22 23:13,14 29:23 30:16 31:18 35:11 40:21 49:7 50:24 51:18 52:3 60:22 62:6 66:4 74:4 75:19 76:1 87:9 95:16 108:15 110:6 124:15 127:14,25 128:15 150:12 152:16 176:14, 15 178:7 180:12 189:5 195:4 196:22 205:15
	topic		turned 197:21 199:1
			turning 111:20 113:7 180:22 192:7
			type 48:16 54:23 55:15,19 62:4 82:25 83:2 101:18 134:21 173:11 180:8

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

types 7:8 10:18 143:8 144:2 typical 44:21 46:7 63:25 97:7 104:20 117:9,10,18 124:6 127:6 154:6 typically 24:10,13 25:22 43:3, 10,13,14,15 44:2,16 67:15 107:8 117:4 127:10 153:10,13,18 161:18 173:1	15 62:11 64:15 67:22 68:23 69:13 75:8 81:24 87:21 88:8 95:25 96:3,14 104:9 112:8,10 114:16 116:20 118:23 126:22 130:6 131:1,10 133:1 143:25 151:1 152:17 157:13 158:18 164:8, 10 165:19 179:5,20 206:3 207:2 understanding 25:19 38:18 39:23 68:13,16 83:23 84:3, 13 87:23 90:16,17 97:9,11 110:25 112:25 113:12 163:1,5,8 171:5 173:6,11 187:17 192:16 203:21 204:18 understood 2:18 4:17 5:2,7,8,15, 25 13:23 61:21 65:23 72:6 76:18 83:5 84:25 91:9 92:23 134:15 209:11 unemotionally 144:20 unexpired 74:25 unfair 113:19,25 unit 159:13 United 27:2,10 units 159:16 unnatural 4:9 unqualified 171:24 unsecured 16:22 upfront	203:9 upper 51:4 71:12 75:20 95:17 124:16 <hr/> V <hr/> values 108:9 varies 46:11 205:22 VDRS 101:2 vehicle 50:17 178:24 vendor 156:12 vendors 156:1 157:25 verb 42:11 verbal 4:14 73:15 verified 159:23 verify 154:8 version 173:7 179:23 versions 179:19 versus 22:12 34:17 44:12 48:4 58:24 114:6 166:23 170:4 vertical 7:1 vesting 8:22 vetted 115:13	videoconference 3:8 view 53:14 59:10 60:11 181:12 182:5 198:4 views 163:15 violated 196:15 volume 122:23 <hr/> W <hr/> wait 4:25 waiting 182:13 waived 2:24 walk 137:12 138:9 177:15 walked 167:9,23 walking 176:16 wall 202:1 wanted 156:1,2,3 159:2 191:17,19 warehouse 86:23 159:16 174:22 204:3,22 205:22 206:1 warehoused 159:13 warehouses 86:10 92:25 93:1,5,9, 18 94:6 waterfall 153:8,12,17 181:6,20, 21,24
--	--	---	---

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Dan Moses

In re: Cash Cloud Inc.

ways 24:2	work 6:22 7:9,12,15,17 10:8 11:12,17 18:3 20:4,16, 19 22:1 37:21 38:19 48:21 65:17 97:13 111:12,19 192:25	
week 198:25 199:16	worked 19:18 45:17,20 48:22 57:25 68:11	
weekly 120:2	working 19:6,7 52:24,25 53:6 67:3 113:16 114:5,25 121:20,23,25 133:16 176:13 206:2,5	
when-is 176:2	Works 137:10	
wherewithal 150:4	worry 100:3	
whoever's 153:9 181:6	worse 119:21 122:6 157:1	
wife 134:16	written 79:5,9	
Williams 201:20	wrong 87:18	
winner 186:1 198:3	<hr/> Y <hr/>	
winning 153:10 157:5 183:19 184:6 200:3	year 199:22	
withdraw 81:10	years 8:11,17 9:9,10,11 38:3 45:16 46:4 121:15	
withdrew 197:4	yesterday 89:2 94:11	
Wolf 137:21,22,25 138:4 140:1 141:11,16 146:14,15,19 148:14, 15 150:7 170:9 171:10,13	York 134:11 195:10	
won 184:9 197:25	<hr/> Z <hr/>	
wondering 177:9	Zack 201:20 209:10	
word 9:2 42:5,9 61:4 154:8 181:6 194:22 205:16	zoom 3:8 41:17 206:21	
words 23:23 27:15 35:16 36:8 51:6 56:20 67:10 104:9 133:1 178:6,17		